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IN THE

# SUPREME COURT OF THE UNITED STATES

October Term, 1940

No. 119

PHILIPPINE NATIONAL BANK, *Petitioner,*

—VERSUS—

PHILIPPINE TRUST COMPANY and UNION INSURANCE SOCIETY OF CANTON, LTD., *Respondents.*

**PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINES AND SUPPORTING BRIEF.**

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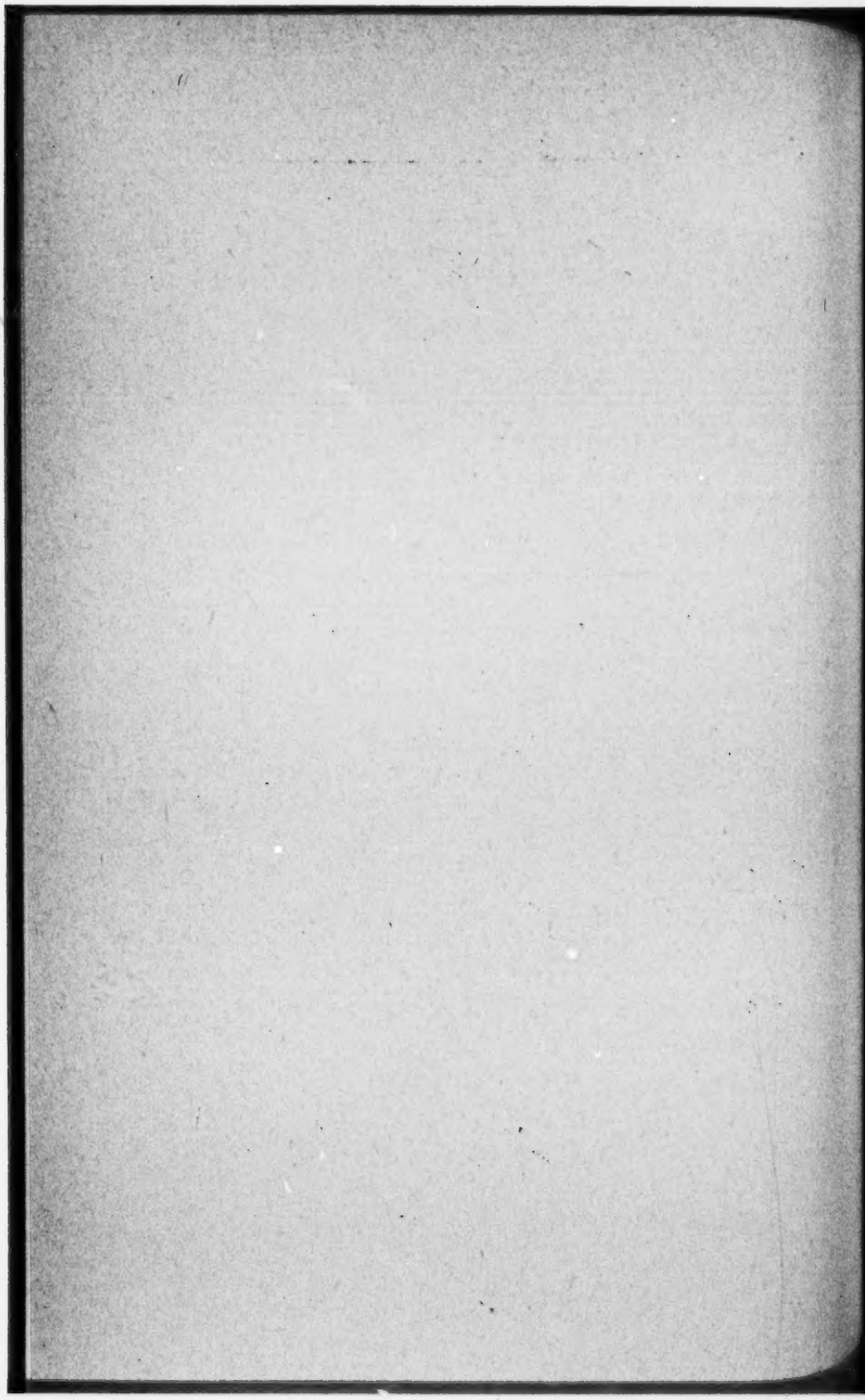

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# SUPREME COURT OF THE UNITED STATES

**October Term, 1940**

**No.**

PHILIPPINE NATIONAL BANK, *Petitioner,*

—VERSUS—

PHILIPPINE TRUST COMPANY and UNION INSURANCE SOCIETY OF CANTON, LTD., *Respondents.*

## PETITION FOR REVIEW ON CERTIORARI

COMES now the Philippine National Bank, hereinafter referred to as the Bank, and to this Honorable Court respectfully prays that a writ of certiorari be issued to review the judgment of the Supreme Court of the Philippines rendered in the case of the PHILIPPINE NATIONAL BANK, Plaintiff-Appellant, *vs.* PHILIPPINE TRUST COMPANY and UNION INSURANCE SOCIETY OF CANTON, LTD., Defendants-Appellees (G. R. No. 45427) affirming a decision of the Court of First Instance of Manila dismissing petitioner's amended complaint for the recovery of the sum of TWO HUNDRED FIFTY THOUSAND PESOS (₱250,000), equivalent to ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS ($125,000.00, U. S. Cy.) jointly and severally owing from respondents as damages caused by the latter's non-performance of a contract had with the petitioner, to the end that judgment

be rendered in accordance with the amended complaint.

## STATEMENT OF THE MATTER INVOLVED

The facts of this case are contained in a Stipulation of Facts executed by the parties hereto (Record pages 13 to 27), and are supported by documents whose authenticity is admitted. The following is a summary of the essential facts of this case:*

1. In 1917, the Mindoro Sugar Company, hereinafter referred to as the Mindoro Sugar, issued bonds amounting to $1,500,000.00, U. S. Cy., payable with interest at the rate of 8% per annum and redeemable within twenty years thereafter, more specifically, on or before July 1, 1937 (Exh. "A", Record pages 27 to 76). The Philippine Trust Company, hereinafter referred to as the Philippine Trust, was the trustee of the properties of the Mindoro Sugar (Exh. "A", Record page 27). In 1923, the Union Insurance Society of Canton, Ltd. and other companies affiliated to and controlled by it, hereinafter referred to as the Union Insurance, were holders of the said bonds total par value of which was $1,500,000.00, United States Currency or ₱3,000,000.00, Philippine Currency (Exh. "C", Record page 80). But in 1929 the Philippine Trust already had bonds amounting to $782,000.00 and the Monte de Piedad y Caja de Ahorros, hereinafter referred to as the Monte de Piedad, held $371,000.00 worth of said bonds (Exh. "R", Record page 153).

* The underscoring and parenthetical explanations appearing in quotations from exhibits or authorities are ours, unless the contrary is expressed.

These sums amounted to $1,153,000.00; the rest of said bonds, worth $447,000.00, continued to be held by the Union Insurance.

2. In 1921 the Mindoro Sugar obtained ₱250,000.00 ($125,000.00, United States Currency) from the Bank, which sum was secured by a second mortgage constituted on the properties subject to the Deed of Trust (Exh. "B", Record page 76).

3. In 1922 the Philippine Trust took possession of the properties of the Mindoro Sugar and together with the Union Insurance and the Bank, operated the business of the said Mindoro Sugar. To this effect, Mr. O'Malley, then president of the Philippine Trust, said (Exh. "E", Record pages 97 to 101):

"It being apparent that the Company (Mindoro Sugar) would probably not meet the payment of Bond interest due June 30th, 1922, and on which the period of grace allowed under the Bond mortgage expired September 1st, 1922, the Philippine Trust Company and the Union Insurance Society of Canton, representing the holders of the bonds, signified to the Philippine National Bank their intention of executing the Bond mortgage, but at the same time suggested that, in order to prevent loss of the ₱250,000 secured by the Bank's second mortgage, we would be glad to enter into an agreement with the Bank whereby the Bank would be enabled to recover its ₱250,000, in exchange for contributing one-third of the expenses for the proper conduct of the business of the Mindoro Sugar Company until the same should be self-sustaining.

* * * * *

"The Philippine Trust Company took possession of the Mindoro Sugar Company's property in Mindoro, under terms of the Bond mortgage, in September, 1922, and has since been operating the same in conjunction with the Bank and the Union Insurance Society of Canton.

* * * * *

"The 1922-23 crop, estimated at 86,000 piculs, is expected to produce sufficient to repay us the expenses of that crop and at the same time largely finance the planting of the 1923-24 crop, which is estimated will produce not less than 200,000 piculs of sugar, the proceeds of which, after repaying us for all expenses in connection therewith, and planting a still large crop for the following year, will undoubtedly permit of making a substantial payment on account of the Philippine National Bank's second mortgage of ₱250,000.00."

4. The agreement for the joint operation of the Mindoro Sugar affairs was signed on January 9, 1923 (Exh. "C", Record pages 80 to 84). With respect to the second mortgage in favor of the Bank, Exhibit "C" states as follows (Record page 82):

"That the Bank agrees to proceed immediately to the foreclosure of its mortgage and either bid the property in for the amount of the claim when sold, or to join with the other two parties in bidding it in, in the name of the San Jose Development Co. If the Bank bids the property in, it agrees to transfer its title to the San Jose Development Company so organized for the sum so paid, and to take in payment a second mortgage on the property for said amount."

5. In 1924, because of the new policy enunciated by the Government of the Philippines of divorcing itself from private business, the Bank suggested and secured its separation from the enterprise of financing the Mindoro Sugar affairs. The letter of respondents dated June 17, 1924 expresses the sentiment which predominated among petitioner and respondents (Exh. "F-1", Record pages 103 to 104):

"17th June, 1924

"Messrs. Philippine National Bank,
Manila, P. I.

"Dear Sirs:

"Referring to our conference with your Mr. Beam regarding Mindoro Sugar Company affairs, we are agreeable in principle to the proposition submitted by him as follows:

"1. *That we and our associates take over all rights of the Philippine National Bank under the second mortgage executed in its favor* by the Mindoro Sugar Co.;

"2. *That we pay the Philippine National Bank the amount now due on said mortgage over a period of five or six years;*

"3. That we relieve the Philippine National Bank of any obligation it has or may have to assist in the financing of Mindoro after the liquidation of the present crop. All advances made and which may be made by the National Bank on the present crop be repaid to said bank out of the proceeds of the sale of said crop;

"4. That the Philippine National Bank continue to assist in financing the crop now in the ground until it is harvested and milled.

"We will immediately submit said proposition to our principals and/or associates and will recommend its acceptance.

Very truly yours,

(Sgd.) W. D. CLIFFORD
*Vice-President, Philippine Trust Co.*

(Sgd.) H. HUNTER
*Branch Manager, Union Insurance Society of Canton, Ltd.*"

The Executive officers of respondents appeared to be confident that an operation of five or six years of the properties of the Mindoro Sugar was sufficient to lift the second mortgage.

On July 16, 1924, respondents in some way modified their attitude, as appears from Exhibit "F" (Record pages 101 to 103), which reads as follows:

"Manila, P. I., July 16, 1924

"The Philippine National Bank
Manila, P. I.

"Gentlemen:

"Referring to letter addressed to you on June 17th by Mr. W. D. Clifford, Vice-President of the Philippine Trust Company, and Mr. H. Hunter, Branch Manager of the Union Insurance Society of Canton, Ltd., regarding Mindoro Sugar Company, we beg to state that *we are not agreeable to*

*proposition set forth* in the said letter *in the form submitted.* We are of the opinion, after receiving legal advice, that the agreement entered into on January 5, 1923, by and between the Philippine National Bank, the Union Insurance Society of Canton, Ltd., and the Philippine Trust Company regarding the financing of Mindoro is binding upon the National Bank and that it can not be relieved of its responsibility thereunder without consent of our respective companies. We are further of the opinion that the bondholders of Mindoro are under no obligation with respect to the mortgage held by the National Bank and *we cannot see our way clear to guarantee the payment of mortgage at any particular time.*

"Pursuant to the tentative proposal made to your Mr. Beam at a conference held this morning, we beg to submit herewith the following proposition in connection with Mindoro, it being understood that agreement to this proposition is subject to confirmation by our respective Board of Directors:

"We will release the Philippine National Bank of its obligation to assist in financing Mindoro after the present crop is harvested and the aforesaid agreement of January 5, 1923, shall be cancelled in so far as it affects the National Bank;

*"We will further recognize the mortgage of the National Bank, and if we should sell the properties of the Mindoro Sugar Company, we will see that the purchaser makes satisfactory arrangements for the payment of the mortgage of the Philippine National Bank;*

Provided always:

"1. That the Philippine National Bank will continue to advance one-third of the expenses, necessary for carrying on Mindoro until the present crop is harvested;

"2. That the proceeds derived from the sale of the sugar milled from the present crop shall be divided equally among the three parties;

"3. That if the shares of said proceeds pertaining to the National Bank should not be sufficient to cover the advances made by said Bank, we will pay to the National Bank the balance unpaid out of the 1925-26 crop;

"4. *That the foreclosure proceeding instituted by the Philippine National Bank shall remain in* status quo *with the understanding that if at any time, we, or either of us, desire it, the National Bank shall proceed to the sale of the properties under the judgment of foreclosure, or will assign the judgment to us or our nominee as we may desire.*

Very truly yours,

PHILIPPINE TRUST COMPANY
By (*Sgd.*) W. D. CLIFFORD

UNION INSURANCE SOCIETY
OF CANTON, LTD.
By (*Sgd.*) H. HUNTER"

The Bank, with the following amendments to the last two paragraphs, as per the resolution of its Board of Directors of July 14, 1924 (Exh. "G", Record pages 105 to 106):

"2. That if the share of said proceeds per-

taining to the National Bank should not be sufficient to cover the advances made by said bank, we will pay to the National Bank the balance unpaid out of the 1925-26 crop, and provided further that if the advances made for the 1923-1924 crop be not paid in full including interest, we will pay to the National Bank the balance unpaid out of the proceeds of 1924-1925 crop, and if it is not totally paid out of the crop, that same be paid out of the 1925-1926 crop.

"4. *That the foreclosure proceedings instituted by the Philippine National Bank shall remain in status quo as long as the undersigned continue financing the crop and operation of the Mindoro Sugar Estate, with the understanding that if at any time we, or either of us, desire it the National Bank shall proceed to the sale of the properties under the judgment of foreclosure, or will assign the judgment to us or our nominee as we may desire.*"

accepted the propositions advanced in Exhibit "F".

On July 23, 1924, the officers of the respondents expressed their conformity to the proposed amendments, subject however, to confirmation by their respective boards of directors, which was later given. (Exhs. "H", "I" and "I-1", Record pages 106, 108, and 109).

And on September 1, 1924, the document separating the Bank from the Mindoro Sugar business was executed (Exh. "J", Record pages 110 to 113). With reference to the Second Mortgage of $125,000.00, the document states (Record pages 111 and 113):

Now it is hereby agreed and declared by and

between all parties:

"2. The Second Mortgage of ₱250,000.00 of the Philippine National Bank to be recognized by the parties of the Second and Third parts in the event of a sale of the properties of the Mindoro Sugar Company by the said parties when provision will be made whereby the purchaser will make satisfactory arrangements for the payment of the amount of the mortgage of the Philippine National Bank.

"5. The foreclosure proceedings instituted by the Bank shall remain in status quo so long as the Philippine Trust Company and the Union Insurance Society of Canton, Ltd., continue to finance the crop and the operation of the Mindoro Sugar Estate with the understanding that if at any time the Philippine Trust Company and the Union Insurance Society of Canton, Ltd., or either one, desire it, the Bank will proceed to the sale of the properties under the judgment of foreclosure or will assign the said judgment to the Philippine Trust Company and the Union Insurance Society of Canton, Ltd.; or to either, or their nominee as they or either one may desire."

6. On May 6, 1926, the Philippine Trust, as trustee, sent the following letter to the Bank (Exh. "K", Record pages 113 to 115):

"PHILIPPINE TRUST COMPANY

Trustee for the Bondholders of the
Mindoro Sugar Company
Manila, Philippine Islands

May 6th, 1925.

"The Philippine National Bank,
Manila, P. I.

"Gentlemen:

"In order to carry out *our plans for the successful development* of the Mindoro Sugar Company properties, we wish to release the Union Insurance Society of Canton, Ltd., from the agreement of September 1st, 1924, entered into by that company, the Philippine Trust Company, and the Philippine National Bank, leaving the terms of said agreement in full force, however, as between the Philippine National Bank, the Philippine Trust Company, Trustee, and the Philippine Trust Company. This agreement, you will recall, was made pursuant to the request of the Philippine National Bank to be released from its obligation to finance under the original agreement of January 5, 1923, signed by the same parties.

"We differ with our Hongkong associates as to the policy to be followed in protecting the interest of the bondholders and *wish to be free to carry out our own ideas with regard to putting the property upon a paying basis.*

*"We have completed arrangements for the continued financing of the Mindoro enterprise* and to adequately secure whatever balance may be due your bank after liquidation of the crop just harvested, we shall be pleased, in addition to the protection your bank will have under the agreement referred to, to execute a mortgage in your favor on the crop now in the ground.

"Will you kindly advise us as to whether you are agreeable to our proposal.

Very truly yours,

PHILIPPINE TRUST COMPANY,
*Trustee*
By (Sgd.) M. H. O'MALLEY
*President*"

It can be gleaned from the foregoing letter that the Philippine Trust was determined to push through the rehabilitation of the Mindoro Sugar and that it had completed arrangements for the continued financing of the Mindoro Sugar.

The Bank refused to release the Union Insurance, from its obligation under Exhibit "J". (See Exh. "K-2", Record pages 121 to 122):

7. On December 27, 1928, the Philippine Trust proposed to buy the second mortgage of the Bank in the following terms (Exh. "O", Record, pages 139 to 141);

"Confirming our verbal discussion to be subject to approval of your Board of Directors, the Philippine Trust Company as trustee of the bondholders under the deed of trust executed in its favor by the Mindoro Sugar Company on the 21st day of December, 1917, hereby offers to pay ₱13,601.84 for all of your right, title and interest in and to a certain indenture of mortgage for the principal sum of ₱250,000.00 executed in your favor on the 14th day of April, 1921, by the Mindoro Sugar Company on all of its property situated in the Municipality of San Jose, province of Mindoro, * * *."

to which the Bank refused, as per the resolution of

its board of directors which reads as follows (Exh. "O-4", Record page 144):

"149. *Philippine Trust Company — Mindoro Sugar Co.*— In connection with the offer of the Philippine Trust Co., dated Dec. 27, 1928, for the purchase for the sum of ₱13,601.84 of our judgment against the Mindoro Sugar Co., covering foreclosure of our second mortgage against the property, the Board resolved that the management write the Philippine Trust Company that inasmuch as the action of this Bank has been in all respects carried out in accordance with the desires of the Trust Company we are forced to decline the offer made in their letter of Dec. 27, 1928, and that we look to them for full payment of our claim against the Mindoro Sugar Company *as contemplated in the general understanding we have had with the Trust Company.*"

8. On February 1, 1929, in consideration of the sum of ₱1.00 and other valuable considerations, the Philippine Trust transferred its credit of ₱5,500,000.00 against the Mindoro Sugar to the Archbishop of Manila (Exh. "O-A," Record page 149). To be exact, the credit transferred amounted to ₱5,490,481.25, in accordance with Annex B of Exhibit "Q" (Record pages 151-153):

*Claims Assigned to*
*Roman Catholic Archbishop of Manila*

| | | |
|---|---|---|
| Total advances from Oct. 7, 1922 up to Jan. 30, 1929 .... | ₱8,976,645.71 | |
| Interest charges 8% up to Jan. 31, 1929. | 1,000,711.40 | |
| | ₱9,977,357.31 | ₱9,977,357.31 |

Less:

| | | |
|---|---|---|
| Sales of sugar ..... | ₱4,309,752.29 | |
| Miscellaneous ..... | 177,123.77 | ₱4,486,876.06 |
| Amount assigned to R. C. A. of Manila ..... | | ₱5,490,481.25 |

Even if the deed of transfer says that the foregoing is a "preferred claim", it can be observed that this "preferred claim" is not included as such under Section 10 of Article 2 of the Deed of Trust (Exh. "A", page 27).

9. On April 1, 1929, the Philippine Trust resigned as trustee, *and on the same day*, the Philippine Trust and the Monte de Piedad, as holders of the majority of the outstanding bonds, elected the Archbishop of Manila as trustee (Exh. "R", Record pages 153 to 155) who accepted the election on the same date (Exh. "S", Record pages 155 to 157) and *on the same date*, that is, April 1, 1929, announced the sale of the Mindoro Sugar properties (Exhs. "L-3," "L-4," and "L-5," Record pages 125 to 130).

10. The sale was to be held before the Justice of the Peace of the Municipality of San Jose Mindoro, Philippines, on May 1, 1929, at 9:00 o'clock A. M., and under the following conditions (Exh. "L-3," Record pages 125 to 130):

"Said sale shall be made for cash to the highest bidder but subject to obligations which shall be assumed by the purchaser as follows:

| | |
|---|---|
| Roman Catholic Archbishop of Manila ..... | ₱5,549,340.84 |

| | |
|---|---|
| Installment and interest due Philippine Government on account of Friar land sale Certificate No. 2 . | 240,857.22 |
| Philippine Trust Company ..... | 777,126.26 |
| Bondholders — Principal and interest ..... | 3,303,739.20 |
| Total ..... | ₱9,861,063.52 |

"The right is reserved to reject any bid."

The Bank protested the sale in that it did not provide for the payment of the Bank's second mortgage (Exhs. "L", "L-1," and "L-2," Record pages 122 to 125). The records of the case do not show why the sale was not made on the date announced.

11. On July 14, 1929, the Archbishop of Manila resigned as trustee and on the same date the Philippine Trust and the Monte de Piedad elected Messrs. Francisco Ortigas, Leopoldo Kahn, Wenceslao Trinidad, Joseph E. H. Stevenot and Fulgencio Borromeo as trustees (Exh. "T", Record page 157) who forthwith accepted their position (Exh. "U", Record page 160):

On August 26, 1929 the new trustees re-announced the sale of the properties of the Mindoro Sugar to be made before the Justice of the Peace of San Jose, Mindoro, Philippines, on November 4, 1929 at 9:00 A. M., under new and altered conditions, and as in the previous notices of sale, without making any provision for the payment of the Bank's second mortgage. The conditions of the sale were as follows (Exh. "M", Record pages 131 to 136):

"The terms and conditions upon which said sale

shall be made are as follows:

1. That there now exist the following obligations:

| | |
|---|---|
| 1. Installment and interest due Philippine Government on account of Friar Land sale Certificate No. 2.... | ₱ 233,768.00 |
| 2. Roman Catholic Archbishop of Manila ..... | 5,539,340.84 |
| 3. Philippine Trust Company.. | 777,126.26 |
| 4. Bondholders-Principal and interest ..... | 3,303,739.20 |

"Said sale shall be made to the highest and best bidder, but subject to the obligation to the Philippine Government of Two Hundred Thirty-Eight Thousand Seven Hundred Sixty-eight (₱238,768.00) Pesos with such interest as may be due after September 30, 1929, at the rate of four (4%) per cent per annum (above mentioned), which shall be assumed by the purchaser; and

"2. The purchaser shall also agree to purchase and take over from the trustees all merchandise, stores, fertilizer and so forth on hand at the date of the sale at cost price and under such conditions as the board of trustees may agree upon.

The right is reserved to reject any bid."

On the date announced, the Justice of the Peace of San Jose, Mindoro, adjudicated the properties for the sum of ₱3,000,000.00, equivalent to $1,500,000.00, U. S. Cy., to the Archbishop of Manila who was the highest bidder at the said sale, but who, nevertheless, did not pay any cash as appears

from a provision of the Deed of Sale (Exh. "V", Record page 162, 164):

"I further certify that the said purchaser, THE ROMAN CATHOLIC ARCHBISHOP OF MANILA is the highest and best bidder and being the holder of a first lien in the sum of more than FIVE MILLION PESOS (P5,000,000.00) did not pay the sum of THREE MILLION PESOS (P3,000,000,00) as the sale price of the said property, and I have issued to him this certificate under the guarantees prescribed by law."

It should be noted that the "first lien" mentioned in the afore-quoted paragraph of the Deed of Sale does not appear to be registered in the Registry of Deeds.

12. In the Stipulation of Facts there appears the following (No. 16, Record page 19):

"16. It is stipulated that there was no provision made for the recognition or payment of the second mortgage of plaintiff in the sale of the properties of the Mindoro Sugar Company by said Board of Trustees under the Deed of Trust as disclosed by Exhibits "M" and "N" hereof.

"It is further stipulated that after the month of April, 1929, neither of the defendonts further financed the crops or the operation of the Mindoro Sugar Estate.

"It is further stipulated that the defendants have no notice to plaintiff of the cessation of the financing of the crops or operations of the Mindoro Sugar Estate * * *.

"It is further stipulated that the plaintiff never executed the judgment of foreclosure (Exh. "D-1"

hereof) by the sale of the properties of the Mindoro Sugar Company thereunder and never collected the amount of said second mortgage or any part thereof.

"It is further stipulated that if the Articles of Incorporation of the San Jose Development Co., mentioned in said agreement of January 5, 1923 (Exhibit "C" hereof) were ever drafted, that prospective corporation was never capitalized and never functioned."

And in No. 20 of the Stipulation of Facts it is further stated (Record, page 23):

"It is stipulated that the sums due from the Mindoro Sugar Company and secured by said Deed of Trust at the time of its foreclosure were as recited in paragraph '4' of the reamended answer of the defendants, and that the sales price of Three Million (₱3,000,000) Pesos bid on the property to the Mindoro Sugar Company at the time of said sale on November 4, 1929 was applied on account of the indebtedness of Five Million, Five Hundred Thirty-Nine Thousand Three Hundred Forty and 84/100 (₱5,539,340.84) Pesos due to the Roman Catholic Archbishop of Manila, and that none of the other creditors mentioned in said paragraph '4' of the reamended answer received any part of the sales price of said properties."

The list of the debts of the Mindoro Sugar appearing in paragraph 4 of the reamended answer of the respondents is as follows (Record page 25):

"1. Roman Catholic Arcbishop of Manila ..... ₱5,539,340.84

| | |
|---|---|
| 2. Installment and interest due Philippine Government on account of Friar Land Sale, Certificate No. 2. | 240,857.22 |
| 3. Philippine Trust Company for advance ..... | 777,126.26 |
| 4. Bondholders, principal and interest ..... | 3,303,739.20 |
| Total..... | ₱9,861,063.52" |

SUMMARY OF ESSENTIAL FACTS

Limiting ourselves to the very essential facts as above narrated, the case may thus be succinctly stated:

Respondents suggested that "in order to prevent loss of the ₱250,000 secured by the Bank's second mortgage, we would be glad to enter into an agreement with the Bank whereby the Bank would be enabled to recover its ₱250,000 ($125,000.00 U. S. Cy.), in exchange for contributing one-third of the expenses for the proper conduct of the business of the Mindoro Sugar until the same should be self-sustaining, and with the further understanding that the Bank would participate to the extent of one third (1/3) of any profits that might to realized out of the operation." (Exh. "E", Record page 97).

When the Bank was allowed to leave the operation of the Mindoro Sugar, the respective officers of respondents said that "we will pay the Philippine National Bank the amount now due over a period of five or six years" (Exh. "F-1". Record page 103). But later on respondents did not want to confirm the said proposition in the "form submitted" because "we can not see our way clear to guarantee the said mort-

gage at any particular time" (Exh. "F", Record page 101), so that they instead advanced the following proposition:

"We will further recognize the mortgage of the National Bank, and, if we should sell the properties of the Mindoro Sugar Company, we will see that the purchase makes satisfactory arrangements for the payment of the mortgage of the Philippine National Bank:"

which was accepted by the Bank (Exhs. "G", "H" and "I-1", Record pages 105, 106 and 109). When Exhibit "J" was drafted, the foregoing understanding was expressed in the language quoted on pages 9 and 10 of this petition.

On May 6, 1926, the Philippine Trust "in order to carry out" their "plans for the successful development of the Mindoro Sugar Co. properties" and confirming that "we have completed arrangements for the continued financing of the Mindoro Sugar Company," and alleging "that we differ from our Hongkong associates as to the policy to be followed in protecting the interest of the bondholders" asked of the Bank that the Union Insurance be released from its obligation under the agreement of September 1, 1924, or Exhibit "J". (Exh. "K", Record, page 113). But the Bank denied this because it felt that it should "insist on the terms of the existing agreement and should see to it that they strictly comply with its terms" (Exh. "K-2", Record page 121).

On December 27, 1928, the Philippine Trust offered to buy the second mortgage of ₱250,000.00 ($125,000.00) U. S. Cy. of the Bank for only ₱13,601.84, (Exh. "O", Record page 139) which of-

fer was forthwith rejected by the Bank. (Exh. "O-4", Record page 144).

On February 1, 1929, in consideration of ₱1.00 and other valuable considerations, the Philippine Trust transferred to the Archbishop of Manila its credit of ₱5,500,000.00, and on the same date the respondents elected the latter as trustee, who announced the sale of the properties on the same date (Exhs. "Q-A", "R" and "L-3", Record pages 149, 153 and 125-130). On June 14, 1929, the Archbishop resigned as trustee, and on the same date the respondents elected as trustees Messrs. Francisco Ortigas, et al., (Exh. "T", Record page 157), upon whose petition the Justice of the Peace of San Jose, Mindoro, sold the Mindoro Sugar properties (Exh. "V").The sale was made over and above the protest of the Bank (Exhs. "L-1" and "1-2", Record pages 123, 124).

Respondents, notwithstanding the control which they had over the Mindoro Sugar affairs, did not comply with their contractual obligation to make provision whereby the purchaser was to make satisfactory arrangements of the payment of the mortgage of the Bank (Exh. "J", Nos. 2 & 5, Record pages 110 and 113), as a consequence of which, the Bank was not able to collect its mortgage credit of ₱250,000.00 with stipulated annual interest of 9%, (Exh. "B", Record, page 76).

**THE DECISIONS OF THE COURT OF FIRST INSTANCE OF MANILA AND OF THE SUPREME COURT**

The Court of First Instance of Manila absolved the defendants of the complaint, on the ground that

the sale was not made by the defendants.

"On the other hand, the Court finds that the second clause of the agreement of September 1, 1924 (Exh. "J") is by itself clear. The herein defendants bound themselves therein to acknowledge the second mortgage of ₱250,000.00 of the National Bank in case said defendants sold the properties of the Mindoro Sugar Co. in which case 'provision will be made whereby the purchaser will make satisfactory arrangements for the payment of the amount of the mortgage of the Philippine National Bank.' That was a promise or conditional obligation, compliance with which depended upon a specified event: the acquisition and sale of the defendants of the properties of the debtor Mindoro Sugar Co. The defendants failed to acquire and sell said properties; for that reason the fulfillment of said obligation cannot be demanded. (See Sec. 1114 of the Civil Code)". (Record page 183).

The Supreme Court of the Philippines found the said reasoning correct. It says:

"Although it is true that the second clause of this agreement shows that the defendants recognized the mortgage in favor of the plaintiff Bank (Exh. "B") in the event that the properties of the Mindoro Sugar Company were sold by them, and that in such case they would see to it that the buyer would make satisfactory arrangements for the payment of the plaintiff Bank's mortgage indebtedness, it is nevertheless likewise true that they were not able to sell them, not even acquire them in order to be able to sell them, nor does it show that it was their intention to buy them, for the purpose of obtaining a profit in case of a resale, besides

paying off the mortgage indebtedness of the mentioned plaintiff Bank. As said by the Lower Court, the clause in question only contains a conditional acknowledgment of the plaintiff bank's mortgage and a promise or an obligation which is also conditional, and whose fulfillment depended upon a definite event, namely, the previous purchase of the properties by the defendants, and then, the sale thereof by them. In conditional obligations, the acquisition of rights just as the resolution or extinction of those acquired, will depend upon the event constituting the condition. (Art. 1114, Civil Code). It was optional for the defendants to acquire or not to acquire the properties of the Mindoro Sugar Company; and no matter how closely the terms of Exhs. "F", "G" and even "J", are scrutinized, nothing will be found therein making them obligatory. Consequently, if the acquisition was optional, the sale was also necessarily optional, because the defendants could by no means effect the sale without first acquiring thru purchase the properties, subject-matter of the sale. And let it not be said that the purchase or acquisition of said properties by the defendants was a necessary condition precedent, in view of the stipulations contained in the Deed of Trust (Exh. "A" or "1") which permit the sale without requiring the acquisition or purchase, because the defendant Philippine Trust Company participated in the execution of Exh. J. in two capacities: both as a trustee and as such Company having its own purposes, powers and obligations; and it has been seen that the second clause of Exh. J does not bind the said defendant to perform the acts therein mentioned in its capacity as trustee but in its other capacity, which is quite different." (Record pages 235-236).

## OUR FUNDAMENTAL CONTENTION—THE NULLITY OF THE CONTRACT SHOULD NOT BE DEDUCED IF THERE IS A REASONABLE MEANS OF UPHOLDING ITS VALIDITY.

As may be observed, the decision of the Honorable Supreme Court of the Philippines hinges upon the argument that the purchase of the properties of the Mindoro Sugar was optional on the part of the respondents, who were the holders of the bonds and who had in their hands the life and death of the Mindoro Sugar and the control of its trustee; that it was also optional on their part to sell them afterwards; that, hence, it was optional on the part of said respondents to comply or not with the obligation they contracted of providing for the payment of the plaintiff's credit, and that, therefore, they could shirk with impunity the control which they exercised over the business and leave the plaintiff entirely helpless as regards the collection of his credit, or likewise lie back idle in the event of the sale of the Mindoro Sugar properties.

With all due respect, we humbly submit that it could not have been the intention of the parties to the contract, three well-known credit institutions in the Philippines, to enter into an agreement so ridiculously useless as that which the Philippine decision conceives. It is logical to suppose that these parties had in good faith entered into a binding contract, with the intention that the same will be carried into effect. All the circumstances and all the hypotheses ought to be construed in favor of the validity and effectivity of the contract. Only when it is reasonably impossible to arrive at this result should the nullity and inefficacy of the contract be deduced.

Petitioner also contends that when respondents deliberately placed it out of their power to comply with the agreement, they did something which is equivalent to a breach of contract and respondents are, therefore, liable for the damages incurred by petitioner.

## JURISDICTION OF THIS COURT

The jurisdiction of this Honorable Court is invoked under the Act of Congress approved on August 29, 1916, otherwise known as the "Jones Law" which partly provides:

"SEC. 27. The Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify or affirm the final judgments and decrees of the Supreme Court of the Philippine Islands in all actions, cases, causes, or proceedings now pending therein or hereafter determined thereby x x x x in questions in which the value in controversy exceeds $25,000.00 * * *."

The Court's jurisdiction has been preserved by the Philippine Independence Act (Act of March 24, 1934, ch. 84, 48 Stat. 456, 48 U.S.C.A. par. 1231 et seq.) which provides (in sub-division 6 of Par. 7 thereof, 48 Stat. 462, 48 U.S.C.A. par. 1237) that—

"Review by the Supreme Court of the United States of cases from the Philippine Islands shall be as now provided by law * * *."

This case involves the recovery of the amount of ₱250,000.00, Phil. Cy., (equivalent to ₱125,000.00. United States Currency), as is shown by the trans-

cript of record particularly by the amended complaint (Record pages 2 & 7).

The decision of the Supreme Court of the Philippines was promulgated on May 12, 1939 (Record page 207) and final judgment was entered on December 23, 1940 (Record page 241), and exception and notice of intention to appeal for a writ of certiorari to the Supreme Court of the United States was filed on January 4, 1940. (Record page 242).

## REASONS FOR GRANTING WRIT

The decision of the Supreme Court of the Philippines has departed from the accepted and applied principles and mandates of law and equity, an action which justifies the exercise of this Honorable Court's power of supervision.

As we explain more at length in the Supporting Brief, the Bank believes it is the victim of the acts and omissions of the respondents, which have all the looks of a comedy, and which the decision of the respondent Supreme Court has sanctioned, brushing aside well-known rules of law, some of them very fundamental, respecting the interpretation and enforcement of contracts.

Exhibit "J", embodying the agreements contained in Exhs. "F", "G", "I" and "I-1", clearly shows that it was broken by the respondents by action and omission, causing the petitioner to suffer damages amounting to ₱250,000.00 ($125,000.-00 U. S. Cy.), with stipulated interest and attorney's fees. (Exh. "G").

## PRAYER

WHEREFORE, this Honorable Court is respectfully prayed to grant this petition for a writ of certiorari to review the decision and judgment of the Supreme Court of the Philippines to the end that the same may be reversed, and that the remedy for the wrong committed may be granted, with costs.

## SUPPORTING BRIEF

### THE OPINIONS OF THE COURTS BELOW

The opinions of the Court of First Instance of Manila and the Supreme Court of the Philippines are not yet reported.

### STATEMENT OF THE CASE

A full statement of facts appears in the petition, and for the sake of brevity it is not repeated here.

### SPECIFICATION OF ERRORS

**The Supreme Court of the Philippines erred in not declaring that the respondents contracted a valid obligation by virtue of clause 2 of Exh. "J" in relation to clause 5 of said exhibit and that by transferring a part of their credits to the Archbishop of Manila and by ordering or acquiescing in the sale of the properties of the Mindoro Sugar by its trustees, without making satisfactory arrangements for the payment of the mortgage credit in the amount of $125,000.00, U. S. Cy., (₱250,000, Philippine Currency), they have committed a breach of contract and defrauded as well as damaged the Bank in the above indicated sum together with the interest and attorney's fees as provided in Exh. "B".**

### ARGUMENT

### PRELIMINARY CONSIDERATIONS

The question herein involved reduces itself to the problem of how to interpret a contractual clause. This clause is paragraph No. 2 of Exh. "J" trans-

cribed on page 111 of the Transcript of Record.

The parties to this case attached to said clause two different and opposite senses and scopes. The respondents maintain that the clause creates an obligation on their part to make satisfactory arrangements for the payment of the second mortgage in the amount of $125,000.00, U. S. Cy., (₱250,000.00, Phil. Cy.), constituted in favor of the Bank, subject to two conditions, namely, first, that said defendants should purchase said properties from the Mindoro Sugar and, secondly, that afterwards they should sell or dispose of said properties to a third party. These two uncertain and future events constitute, in their opinion, two circumstances without which said clause could have no effect whatsoever, because the obligation therein created could not be juridically born until the said events have taken place. The decision of the respondent Supreme Court has endorsed said interpretation and adjudged it to be authentic and correct. And in view thereof, it has absolved the defendants from all liability.

In opposition to this interpretation, the Bank contends that the true intention of the parties in stating that the defendants herein acknowledged its second mortgage and that in the event of a sale were bound to make satisfactory arrangements with the purchaser for the payment of such mortgage credit, was not the creation of an obligation subject to a suspensive condition, but the creation of one subject to a period or term whose date or mode of payment was not fixed.

## I

### The interpretation accepted by the decision appealed from is absurd.

The interpretation given by the defendants to the clause in question is absurd, not only from the juridical, but also from the purely rational and logical point of view.

It is a rule of common sense expressly confirmed by Art. 1285* of the Civil Code of the Philippines, that the clauses of a contract should not be interpreted separately, but should be construed as parts of a harmonious whole or unity, which is the contract.

As this Hon. Court has well said in the case of *Green County v. Quinlan, 211 U. S. 582, 53 L. ed. 335, 341*:

"In ascertaining the true meaning of instruments in writing, courts do not confine their attention to single words, phrases, or sentences. The meaning is sought from the whole instrument, viewed in the light of the subject with which it deals. This general rule of interpretation often makes it manifest that that which is called a condition is really but a covenant or agreement, to be performed independently of the counter obligation with which it is associated. When such an intent is discovered

* "Art. 1285. The stipulations of a contract should be interpreted in relation to one another, and those that are doubtful given the meaning which may appear from a consideration of all of them together."—*Civil Code of the Philippines.*

the courts have no difficulty in giving it effect, though the result be to disregard the technical meaning of the word 'condition.' Stanley v. Colt, 5 Wall. 119, 18 L. ed. 502; Sohier v. Trinity Church, 109 Mass. 1; Episcopal City Mission v. Appleton, 117 Mass. 326; Cassidy v. Mason, 171 Mass. 507, 50 N.E. 1027; Clapp v. Wilder, 176 Mass. 332, 50 L. R.A. 120, 57 N.E. 692; Post v. Weil, 115 N.Y. 361, 5 L.R.A. 422, 12 Am. St. Rep. 809, 22 N.E. 145; Clark v. Martin, 49 Pa. 289; Watrous v. Allen, 57 Mich. 362, 58 Am. Rep. 363, 24 N.W. 104; Scovill v. McMahon, 62 Conn. 378, 21 L.R.A. 58, 36 Am. St. Rep. 350, 26 Atl. 479; Hartung v. Witte, 59 Wis. 285, 18 N.W. 175."

See also Boardman v. Reed, 6 Pet. 328, 8 L. ed. 415; Randon v. Toby, 11 How. 493, 13 L. ed. 784; Neilson v. Ragow, 12 How. 98, 13 L. ed. 909; Black v. U. S., 91 U.S. 267, 23 L. ed. 324; O'-Brien v. Miller, 168 U.S. 287, 42 L. ed. 469.

The decision of the respondent Supreme Court has not complied with this universally accepted rule of legal hermeneutics, for, it infers the intention of the parties from the words contained in the clause in question, considered separately from the rest of the contract.

As is readily seen, the phrases employed by the parties were neither felicitous nor accurate. Viewed by themselves and separately from the rest of the contract, these phrases may give rise to a great deal of confusion and doubt. But taken in relation to the other clauses of the contract, and studied in the light of the circumstances under which the contract was entered into, the true intention of the parties appears as clear as day.

As the letter of the contract itself (Exh. "J", Record pages 110-113) shows, the parties thereto had two distinct and concrete ends in view. The first was to provide for and satisfy the desire of the Bank to relieve itself of the duty to finance the Mindoro Sugar (which it was then financing jointly with the two defendants), and the second to solve the economic problem offered by the existence of the second mortgage in favor of the Bank which burdened the properties of the Mindoro Sugar for the sum of $125,000.00, U. S. Cy., (₱250,000.00 Phil. Cy.). This second mortgage had long been due and the Bank had instituted foreclosure proceedings against the properties of the Mindoro Sugar for the collection of the capital secured by said mortgage. The interest had in this case by the Philippine Trust, which was the trustee, and that of the Union Insurance, both of whom were holders of all the bonds of the Mindoro Sugar, is unquestionable. The foreclosure of the mortgage of the Bank was a danger to the rehabilitation plan of the Mindoro Sugar in which the respondents had pinned all their hopes. The respondents in order to avoid this danger, worked for and obtained control over the foreclosure of the mortgage of the Bank, in exchange for the security of the payment of the latter's credit at a certain, though indeterminate future time. (Exh. "B", pars. 2 and 5, Record pages 77 and 78). The close relationship existing between clauses 2 and 5 of Exh. "J" (one of which is the complement and the reciprocal *raison d'être* of the other) is such that, if one were absent, the other would have absolutely no consideration, object or meaning.

Separately considered, clause No. 2 of Exh. "J" gives the idea of a unilateral juridical transaction whereby the Philippine Trust and the Union Insurance gratuitously and graciously acknowledged the mortgage in favor of the Bank and acquired certain future "optional" obligations. Likewise, clause 5 of said "J", separately considered, gives the idea that the Bank alienated important rights without consideration or reason. It is only by correlating the two clauses that the juridical transaction contained in both is perfectly and clearly explained. It is a bilateral juridical transaction having a consideration and a subject-matter of its own.*

It should be noted here, although this may be a digression from the main argument, that, inasmuch as the 2nd and 5th clauses aforecited refer to a consideration, object and purpose, which are ideally and practically different from the purpose and object of the other clauses of the contract, they constitute a contract specifically different from another contained in the other clauses of the document, and it may, therefore, be affirmed that here are two contracts contained within the same document.

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* "Art. 1261. There is no contract unless the following requisites exist: 1. The consent of the contracting parties; 2. A definite object which is the subject-matter of the contract; 3. A consideration for the obligation established."—*Civil Code of the Philippines.*

"Art. 1274. In onerous contracts the consideration as to each of the parties is the undertaking or the promise of a thing or service by the other party; in remuneratory contracts the consideration is the service or benefit for

It being evident that we are dealing with a juridical transaction which is bilateral and onerous, even if we prescind from its technical and legal aspect (acknowledging, as it is now universally acknowledged, that Derbourg was right in affirming that the essence of juridical contracts or transactions, under the law of property, is their essentially economic nature, that is, the fact that they represent values and transfers which may be appraised in terms of money) and view it in its exclusively economic aspect, common sense indicates that there must be in the mutual obligations of the contracting parties a sense of reciprocity, of correlation, of compensation, for this is generally the predominant intention in anyone who enters into a contract regarding his property. In the economic field this has always been the commonplace and current idea underlying contracts.

This is now a universally accepted doctrine invoked by the most distinguished authorities on Civil Law.

"The origin of an obligation is found in the lack of equilibrium constituted by the consolidation of two patrimonies caused by the voluntary and legal transfer of a valuable thing from one to another. Its essence consists in an absolute tendency towards the re-establishment of that broken equilibrium; that is, there is an enrichment produced in my patrimony which demands compensation on my part for the valuable thing which I have re-

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which the remuneration is given; and in contracts of pure beneficence the consideration is the liberality of the benefactor.

ceived, as the result of which I become the debtor and the other the creditor."—*Pierre Louis Lucas, "Volonté et Cause".*

And Sanchez Roman, acknowledged by all Spanish authorities as the most scientific and the most famous among the commentators on the Civil Code in force in the Philippines, after inquiring into the real and logical basis of all contractual relations and rejecting several opinions on the matter, states the following:

"Reciprocity, mutuality, solidarity, in short, all those principles necessary to human co-existence, and due veracity in the promise made and accepted—therein lies the key to the solution of this problem. Undoubtedly, the foundation or cause of obligations is found in the limitation of the physical and moral nature of man, in the need for the aid of other men in the form of obligations which would permit him to accomplish all the ends of his destiny, by offering him means whereby to satisfy all the needs of his existence; his *modus vivendi* is the sphere within which this basis grows, and the law, by conditioning similar motives of truth, gives flexibility, consistency, security and demandability to those necessary human relations."—*4 Sanchez Roman, Derecho Civil, p. 9.*

"In a bilateral obligation, the creditor acts in the field of obligation with respect to the other terminus of the relation only in so far as said obligation is a condition of his right. When likewise applying and controlling by maens of his acts the opposite terminus of the relation, namely, the creditor, the debtor also acts only in so far as the reciprocal right of the creditor is, at the same time,

a condition of his obligation—that is to say, the quality of debtor and creditor, the right and obligation of each one are a condition of the obligation and the reciprocal mutual rights of a bilateral obligation.

"4. In order that an obligation be bilateral it is not enough that the mutual character of creditor and debtor of each other and vice versa should concur in each one of its two personal termini either by accident or by the simple superimposition of both qualities on the same person with respect to the other with whom the contractual obligation is maintained. It is absolutely necessary that both qualities be the reciprocal result of the bond constituting such relation and that the mutual quality of debtor and creditor be a condition of the corresponding quality to be found in the opposite personal terminus.

"5. Bilaterality in obligations consists, then, in perfect mutuality or reciprocity; the same persons mutually bound to each other, and each one not only having the reciprocal right corresponding to the respective contrary obligation, but giving each other this reciprocity of obligation, in such a way that one may not exist without the other and that each be a mutual condition of the other; that these bilateral obligations should have as a source the same cause of duty, the same bond, in short, no distinct relation.—*4 Sanchez Roman, Derecho Civil, pages 38-39.*

All these opinions do no nothing but to translate into technical language a common concept or idea which is, in turn, the expression of the real fact in the economic field. Nobody parts with any portion of his property, or acquires a voluntary obligation, unless

it is in the belief and certainty of some compensation. This theory represents the current form of procedure in economic transactions, and, hence, in case of doubt, the decision should have applied it in determining what was the intention of the parties in executing the aforecited clauses 2 and 5 of Exh. "J".

Pursuant to the doctrine and the principles aforecited, it must be presumed that in the obligations contracted by the Bank on the one hand in favor of the defendants, and those contracted by the latter with the former, there is an economic valuation of equality, weight and reciprocity.

"Business contracts must be construed with business sense, as they naturally would be understood by intelligent men of affairs."—*North German Llyod v. Guaranty Trust Co. 244 U. S. 12, 61 L. Ed. 960.*

"As a general rule in the interpretation of written instruments, the intention of the parties must control, such intention to be gathered from the words used according to their ordinary signification if they be clear and explicit, but if such words are ambiguos then resort may be had to such evidence, written or oral, as will disclose the circumstances attending the execution of the instrument and place the court in the situation in which the parties stood when they signed the writing to be interpreted."—*United States v. Choctaw National, 179 U. S., 294, 45 L. ed 291.*

"Where it appears that that which is called a condition in a written instrument is really but a

covenant or agreement, to be performed independently of the counter obligation with which it is associated, the courts have no difficulty in giving effect to such intent, though the result be to disregard the technical meaning of the word 'condition' "—*Green County v. Quinlan 211 U. S. 583, 53 L. ed. 335.*

"Where it is plain that a strict and literal construction of a contract does not convey the real meaning of the parties, such construction is not to be entertained."—*Serralles v. Esbri, 200 U. S. 103, 50 L. ed. 391.*

The Supreme Court of Spain in its decision of January 29, 1873 and February 6, 1883, very wisely held that:

"A contract can not be interpreted in such a way as to give one of the parties the exclusive benefit and leave all the prejudice to the other."

Let them be placed on an imaginary balance. By virtue of clause 5 the Bank, which is clearly entitled to foreclose the properties of the Mindoro Sugar and which has instituted the corresponding action therefor, relinquishes such right and action. More, it places them entirely at the disposal of the defendants, and, in reality, transfers them to the latter, inasmuch as pursuant to the terms of that clause they acquire the right either to have the Bank indefinitely suspend its action while they finance the Mindoro Sugar, or to have it, upon its request, resume the foreclosure proceedings and sell the properties of the Mindoro Sugar. It is, therefore, the convenience of the defendants, based naturally in the condition of the business of the Mindoro Sugar, which fixes the time when and

the manner in which the Bank is to collect its credit. The payment of the Bank's indebtedness is thus subject to their will, to a term or indeterminate period. And the Bank which knows at this time [because the respondents have the majority interest in the properties of the Mindoro Sugar valued at millions of pesos, (see Exhs. "B", "F", and Annex B of Ex. "Q") and because they entertain the certain hope of making good business by continuing to finance the Mindoro Sugar (Exh. "E")] that the collection of its mortgage credit would be more secure if it acquiesced in the desires of those who in reality have the control of the properties of the Mindoro Sugar, agrees to cooperate in financing the latter and places at the disposal of the respondents its mortgage credit. When it later has to separate itself from the enterprise it succeeds in making the respondents fulfill the promise which they have previously made of securing the payment of its credit at some future time which, though not fixed, is nevertheless certain to come.

The foregoing is an accurate appreciation of the mutual obligations contracted by the parties.

Is there reciprocity, a just and rational compensation on the part of the Bank in clause 2, as now interpreted by the defendants and the decision of the respondent Supreme Court? No.

At first glance, one can readily see the disproportion, the economic lack of balance which such interpretation entails. The Bank waived its credit and placed it at the disposal of the respondents and contributed in the financing of the Mindoro Sugar while it was able to do so. On the part of the Bank,

the contract was not only perfected, but consummated and thoroughly performed in accordance with the agreement. What did it obtain in exchange therefor? According to the respondents and the Courts *a quo*, absolutely nothing. A very remote hope, subject to two uncertain events, which depend absolutely upon the free will of the respondents, is all that the latter are willing to grant—in other words, nothing at all.

The future of the Mindoro Sugar admitted of but two solutions. One of them was the success of the business. In such case the Bank would not have needed at all the acknowledgment of its mortgage by the respondents. The security offered by such acknowledgment could only be of value in case the business of the Mindoro Sugar failed. This being so, it would have been utterly absurd for the Bank to believe, upon signing the contract, that the Philippine Trust and the Union Insurance would, in case the business failed, buy for themselves the properties of the Mindoro Sugar for the purpose of reselling them. This is so puerile, so far removed from anything conceivable, that, common sense rejects it as an absurdity from the eonomic point of view. It could not have been in the mind of either the Bank or the respondents, three juridical entities managed by persons of acknowledged technical ability.

On the other hand, in plaintiff's interpretation of clause 2, is found the just and economic mutuality of reciprocal obligations. The Bank acquires rights and securities which at some future time will compensate it for the rights which it now relinqhishes. It suspends the collection of its credit and waives its

action in favor of the respondents. The latter, hoping to salvage the eight-million-peso interest they have in the Mindoro Sugar, deem it legally just and economically prudent to secure the payment of the Bank's credit at some future time in exchange for the promise not to demand it at the present time. It is only thus that a balance of interests and rights exists, and a juridical and economic reciprocity obtained. It follows from the foregoing that the interpretation advanced by the respondents is absurd and that the rational one is that offered by the plaintiff.

## II

**The theory of option accepted by the decision of the Supreme Court, renders the contract a complete nullity.**

According to the decision of the respondent Supreme Court, the obligation to acknowledge the mortgage of $125,000.00 U. S. Cy. (₱250,000.00 Phil. Cy.) and to make arrangements for its payment by the purchaser of the properties of the Mindoro Sugar constituted an obligation conditioned upon two acts, the execution of which was optional upon the respondents, namely, the purchase of the properties of the Mindoro Sugar by the respondents and their resale by the same. It states:

"It was optional for the defendants to acquire or not to acquire the properties of the Mindoro Sugar Company x x. Consequently, if the acquisition was optional, the sale was also necessarily optional, x x." (Record page 235-236).

The most cursory reflection on these statements of the decision aforecited will show that they em-

body the most powerful reason for legally rejecting the interpretation it finally adopted.

From the fact that the respondents had the option *to purchase or not to purchase* and *to sell or not to sell*, it can clearly be deduced that, in conformity with said interpretation, it could likewise be optional on the part of the respondents to fulfill or not the obligation contracted in clause 2 of Exh. "J". If that is the case, then the Bank not only practically, but also legally failed to acquire anything whatsoever in exchange for the obligations which it contracted and complied with. Arts. 1115 and 1256 of the Civil Code of the Philippines provide:

"ART. 1115. If the fulfillment of the condition should depend upon the exclusive will of the debtor, the conditional obligation shall be void. If it should depend upon chance, or upon the will of a third person, the obligation shall produce all its effects in accordance with the provisions of this code.

"ART. 1256. The validity and fulfillment of contracts cannot be left to the will of one of the contracting parties."

In accordance with the foregoing articles, if the interpretation of the respondents is to be followed, the obligation and the clause would be null ond void, that is, totally non-existent. In his comments on these articles, Mucius Scaevola, referring to the principle from which Art. 1115 was copied and derived, namely, Art. 1274 of the French Code, states:

"Article 1174 of the French Code, whose literal terms are the following, clearly says so: 'Any obligation contracted subject to a potestative condition

on the part of the obligee, is null and void.' Pothier, interpreting this article, states that in order that the condition may be valid and so that it may suspend the obligation under which it has been contracted, it must not be destructive of the nature of the obligation; that a condition which makes the obligation depend upon the will of the obligee alone would produce such an effect, because obligations being a legal bond contracted on account of necessity and involving essentially the duty to give or to do something, there is nothing more contrary to their nature than to make them depend upon the exclusive will of him who has contracted it; and that, consequently, such condition does not suspend, but extinguishes the obligation which in this case lacks binding force".—*19 Scaevola, Civil Code, p. 652.*

"Said principle may be thus stated: The validity and fulfillment of a contract may not be left to the discretion of one of the contracting parties. 'Discretion' means free will and even whim; 'validity' signifies firmness, subsistence; and 'fulfillment" means execution, reality,—all of which elements may be thus expressed: 'The effectivity of a contract may not be placed at the mercy or the mere will of one of the parties'.

"Now then, when does this take place? When may a contract be deemed left to the will of one of the contracting parties? In which cases is this article applicable?

"The underlying idea of this principle, its essence, may be deemed universal in the sense that in one way or another it is found in the laws of some or all the people of a given era, because it is an element peculiar to contractual life. Every positive right

which admits the doctrine of contract, must apparently accept, whatever its terms may be, the substance of the rule contained in Article 1256 of our Code. For contract being a concurrence of two or more wills with respect to a certain thing, 'the agreement of several persons upon the expression of a common will, designed to regulate their rights", Article 1171 of the Civil Code of the Argentine Republic, it is clear that, granting said juridical concept, we must perforce conclude, whether the law says so or not, that it is not legal to leave the common agreement at the mercy of one of the interested parties."—*20 Scaevola, Civil Code, p. 510.*

"If it is readily known from the letter or the spirit of the contract, or from both, that the obligation must legally come, then there would be no question. But the problem arises when it is not known for certain whether the day will come or not, because it depends upon what the obligee does or desires. Then there is no juridical bond properly so-called, that is, a link tying together the creditor and debtor; the latter is, as it were, loose, a circumstance which negatives the existence of a contract. This is the peculiarity of Article 1256, its philosophy. If the obligation must be complied with whensoever or howsoever the debtor wishes, then, there is no discretion; if the compliance or non-compliance depends upon the power of the obligee, whether because the fact conditioning the contract is subject exclusively to his will and to no other element (See Comments on Article 1115), or whether because the fact does not as yet exist and his absolute will alone prevails thereon, then

there is discretion."—*20 Scaevola, Civil Code, pp. 518-519.*

Garcia Goyena, says the following:

"The reasons underlying this article (1156) are very clear in Roman Law: to be and not to be obliged are incompatible things.

"Digest Book XLV, tit. 1, Law 17—*Stipulatio non valet in rei promittendi arbitrium collata conditione.* A condition left to the will of the debtor-promissor is not valid."—*3 Goyena, Civil Code, p. 27.*

Other authors state the following:

"We already stated in the general part hereof our opinion on potestative conditions and those which are merely discretionary; but from the point of view of positive law there is no doubt that the Spanish legislator does not consider as bound a person who by his own will may unbind himself, or when the obligation depends upon his will. Really in such cases there is no contract."—*3 Valverde, Derecho Civil, p. 141.*

"Paragraph 1 of the same article contains the sound doctrine that when the fulfillment of a condition depends upon the exclusive will of the debtor, the conditional obligation becomes null and void, undoubtedly because the nature of the condition is in such case equivalent to the lack of an obligatory bond, inasmuch as the efficacy thereof is made to depend exclusively upon the will of the debtor; that is, that no obligation exists."—*4 Sanchez Roman, Derecho Civil, p. 132.*

The first part of Art. 1115, in so far as it de-

clares null and void an obligation subject to the condition depending exclusively upon the will of the debtor, is in conformity with the evident and simple reflection that otherwise, it would be tantamount to sanctioning illusory obligations or going against the principle of justice stated in article 1256 which provides that the validity and fulfillment of contracts may not be left to the will of one of the contracting parties." —*8 Manresa, Civil Code, p. 131.*

And, construing Art. 1115, the Supreme Court of Spain rejects as absurd every interpretation of a contract whereby compliance with an obligation is left to the will of one of the parties.

"The stipulation of duties depending upon the acquiescence of him who is bound to comply with them, is absolutely inadmissible in the interpretation of bilateral contracts."—*Decision of the Supreme Court of Spain, Feb. 27, 1912.*

There is no doubt that in accordance with the authorities and doctrines aforecited, clause 2 of Exh. "J", if given the interpretation upheld by the decision of the Supreme Court of the Philippines is null and void and the obligation therein contained, non-existent. That is to say, the result of such an interpretation would no longer be just an irksome disproportion within a bilateral contract; but rather, inasmuch as clause 2 is null and non-existent, only clause 5 would stand with all the obligations it imposes upon the Bank uncompensated by any on the part of the defendants. As matters now stand, this is the practical result of the tremendous error of law committed in the decision of the respondent Supreme Court.

The Bank tied up its hands and feet and placed

its right at the mercy of the respondents thereby losing all hope of collecting its credit at that time; and in exchange for the certainty of collecting it at some future time which was certain to come, it contributed funds, while the political conditions of the country so permitted, towards the rehabilitation of the Mindoro Sugar. And if, in spite of all this, the contention herein criticized should be finally upheld, inasmuch as the success or failure of collection depended upon certain facts which were entirely subject to the will of the other contracting parties, the Bank would not be able to collect its credit.

This would mean that, instead of a guarantee, that is, a right in favor of the Bank, clause 2 created a clever trick whose only object was the annulment of the Bank's right. This conclusion is rejected by the law itself, not only because it is antijuridical, but also because it is both illegal and immoral.

## III

**The petition of respondents praying that the Union Insurance be relieved of its obligation under Exh. "J" and the resolution of petitioner denying said petition show that all of them were aware that in Exh. "J" they had signed an obligatory contract.**

On May 6, 1926, the Philippine Trust requested from the Bank the release of the Union Insurance from its obligation under the deed Exh. "J". (See Exh. "K", Record page 113).

If, according to the contention of the respondents,

those obligations were conditional, that is, non-existent until the event which constituted the conditions should occur, and said event was dependent upon their will; if in order that the obligation should arise it was necessary that they—either one or both —should decide to buy and sell the properties of Mindoro Sugar Co., why did the Union Insurance have to be released by the Bank from the obligation contracted by it? By simply ceasing to finance the Mindoro Sugar, without buying or selling anything, the obligation was, according to their contention, extinguished, instead of born.

It follows from this that when the respondents wanted the release of the Union Insurance from its obligation under Exh. "J", which includes Clause 2 in question, they were well aware that they had signed an obligatory contract, that is. that its meaning was quite different from the one which they now claim to attach thereto.

The Board of Directors of the Bank rejected the petition and advised that "it is the sense of the Board that we should insist on the terms of the existing agreement and should see to it that they strictly comply with its terms". (Exh. "K-2", Record page 121). This also indicates that the Bank believed the contract was obligatory.

Thus, therefore, both parties have shown, by their subsequent acts, that they were aware that Exh. "J" which they had signed, was obligatory.

## IV

**In the interpretation of contracts, if the words should seem contrary to the evident intention of the contracting parties, the latter should prevail**

**over the former, and if the intention should not be evident the doubt should be resolved in favor of a greater reciprocity of interests.**

Article 1281 of the Civil Code of the Philippines provides:

"ART. 1281. If the terms of a contract are clear and leave no doubt as to the intention of the contracting parties the literal sense of its wording shall be followed.

"If the words appear to be contrary to the evident intention of the contracting parties, the intention shall prevail."

Commenting on this article, Manresa says:

"In principle, the law places the intention of the contracting parties, which is the life of the contract itself, upon the words, which constitute the body in which the former is contained, and so much so indeed, that if it is taken in its literal sense it is because, the terms being clear, it is presumed that in them is to be found the will of the contracting parties; in short, the words are worth something, not because of themselves, but because of what they say."—*8 Manresa, Civil Code, 804.*

The doctrine held by this Honorable Court on this point is exactly the same:

"Where it is plain that a strict and literal construction of a contract does not convey the real meaning of the parties, such construction is not to be entertained."— *Serralles v. Esbri, 200 U. S. 103, 50 L. ed. 391.*

The decision of the respondent Supreme Court itself clearly acknowledges that the literal text of

Clause 2 of Exh. "J" is not clear. Said clause in no way limits the guarantee to the contingent event of a purchase by the respondents for themselves of the properties of the Mindoro Sugar and their subsequent resale. An additional statement to that effect would have had to be inserted therein in order to justify said explanation. And the decision of the respondent Supreme Court gratuitously inserts such statement.

If the clause were read separately from the rest of the contract, the impression, upon reading the phrases "in the event of the sale of the properties of the Mindoro Sugar Co. by said parties", would be that the latter had, at the moment of executing the deed, the ability and the right to sell. And so they had. But it does not in any way give the impression that they were thinking of actually buying them. The quoted phrase gives rise to the idea that all the contracting parties thought—in accordance with what was the real truth—that the only ones who could have any right, interest and ability to sell the properties (excluding the Bank, as it was excluded by Clause 5) were the two respondents herein. What other persons, individual or juridical, could have that right, that interest and that ability to sell the properties of the Mindoro Sugar? No one; for the simple reason that only the three contracting parties had the right, either as bondholders or as the only creditors, to sell them or cause the sale thereof. And it was because of this that in consideration of the promise of the Bank not to exercise its right, the other two parties, as a just compensation, bound themselves, in case they should exercise their rights, to make satisfactory arrangements with the purchaser of the pro-

perties for the payment of the Bank's credit.

It is thus seen that even the words of Clause 2, when reasonably explained, confirm the interpretation given them by the Bank.

The subsequent facts corroborate what, at that moment, the Bank, as a contracting party, must have thought. As a matter of fact, the properties of the Mindoro Sugar were sold as a result of a voluntary disposition and with the acquiescence of the bondholders, namely, the respondents, who elected a trustee in order that the latter might, in turn, sell the property, as evidenced by the fact that *on the same date* of his election they announced the sale, and although the bonds had preference over the losses of the business, the respondents did not claim any preference of payment at all. But if, inspite of all the foregoing the intention of the parties should not be deemed evident, then the doubt should be resolved in favor of a greater reciprocity of interests. And this may only be achieved by rejecting the interpretation of respondents which provides for no reciprocity at all, and by accepting that of the petitioner herein, which entails all the reciprocity agreed upon between the parties ever since the beginning of the enterprise which said petitioner was induced to join for the rehabilitation of the Mindoro Sugar.

This conclusion is sustained by Article 1289 of the Civil Code of the Philippines, which reads as follows:

"ART. 1289. If it should be absolutely impossible to decide by the rules established by the preceding articles any doubts concerning the incidental

details of a gratuitous contract, they should be settled in such a way as to effect the least possible transmission of rights or interests. *When doubt arises in constructing onerous contracts, it shall be resolved in favor of the greatest reciprocity of interests.*"

V

**The interpretation of the obscure terms of the clause in question should not favor the respondents, who are its authors.**

Another rule of legal hermeneutics overlooked by the decision of the respondent Supreme Court is that contained in Art. 1288 of the Civil Code of the Philippines.

"ART. 1288. Obscure terms of a contract, shall not be so construed as to favor the part who occasioned the obscurity."

The execution of clause 2 is due entirely to the respondents. This may be gleaned from the narration of the circumstances preceding it.

They proposed said clause, as now written. The Bank limited itself to accepting it.

In Exh. "F", which is a letter signed by the Managers of the respondents proposing an arrangement to the Bank, the following paragraph appears:

"We will further recognize the mortgage of the Bank, and, if we should sell the properties of the Mindoro Sugar, we will see that the purchaser makes satisfactory arrangements for the payment of the mortgage of the Bank."

This paragraph is a literal counterpart—without the names of the contracting entities—of clause 2 of the document, Exh. "J". It is, therefore, logical that inasmuch as the language of the clause is obscure due to the fault of the respondents, the interpretation given it by the latter, who would benefit by such obscurity, should not prevail, but rather the contrary one.

"Doubtful expressions in contracts should be construed most strongly against the party who uses the language."—*Garrison v. United States, 7 Wall. 688, 19 L. ed. 277.*

"A party who takes an agreement prepared by another, and upon its faith incurs obligations or parts with his property, should have it construed favorably to himself."—*Noonan v. Bradley, 9 Wall. 394, 19 L. ed. 757.*

And the Honorable Supreme Court of the Philippines erred in not applying this doctrine repeatedly invoked by it.

"At all events, the most that can be said in favor of the central is that the contract is obscure with respect to this point. In such a case, this obscurity cannot be made to favor the party that caused it (Art. 1288 of the Civil Code), which is the central, as the party that, through its assistant manager Manuel Garcia, attorney, drew up the contract."—*Hijos de I. de la Rama vs. Betia, 54 Phil. 149, 155.*

"If, following the rule and the cases just cited, any ambiguity or obscurity in a contract must be construed against the party causing it, and inasmuch as it is the defendant-appellant who executed

the contract in question, and who is therefore responsible for the ambiguity respecting the rate of interest, said ambiguity must be construed against him."—*Rivero vs. Rabe, 54 Phil. 982, 986.*

"If this ambiguity be considered to exist, the proper construction to be given to this expression is determined by article 1288 of the Civil Code, wherein it is declared that the interpretation of obscure clauses in a contract shall not favor the party who caused the obscurity."—*Gov't of P. I., vs. Derham Brothers, 36 Phil. 960, 967.*

## VI

**In the light of the history of the clause in question, the sale of the properties, which was under the control of the respondents, fixes a term or period of compliance of the obligation.**

Again overlooking a rule of legal hermeneutics, the decision of the respondent Supreme Court also erred in not having taken into consideration the principle embodied in Article 1282 of the Civil Code of the Philippines.

"ART. 1282. In order to judge as to the intention of the contracting parties, attention must be paid principally to their conduct at the time of making the contract and subsequently thereto."

Commenting on this article, Manresa says:

"The intention may be proved by every means and evidenced by different things and facts. This article 1282 does not limit the means of proof to contemporaneous and subsequent acts, inasmuch as the adverb *principally*, besides indicating the im-

portance of these data, justifies the possible influence of others. * * *."

"The law speaks of acts contemporaneous and subsequent to the execution of the contract, but does not in any way exclude thereby those immediately preceding the latter which are related thereto and at times preparatory therefor. To interpret these legal provisions thus would be to suppress for the purposes of the interpretation of contracts the history of the same, a thing which is indispensable in understanding any law; to uphold the absurdity that the claims of the parties do not serve to explain the agreement they have reached; to believe that a contract has been born extemporaneously, as if it had no period of generation or as if the latter were not significant, and to limit the meaning of 'contemporaneous' to an exact simultaneity, which is impossible due to the rapidity of time, the acts involved not being the contract itself which is executed by the same person. But with respect to this point no doubt should arise, it having been decided in our jurisprudence that when doubt arises regarding the meaning of a contract or when it is claimed that its scope and object are unknown, it is indispensable in order to determine them, to look into the preceding facts preparatory therefor the aggregate of circumstances which have accompanied it, the intention and object of the contracting parties and the subsequent acts of the latter related thereto. (Decisions of the Supreme Court of Spain, Jan. 20, 1871 and April 3, 1884)."—*8 Manresa, Codigo Civil, pp. 706, 706-7.*

As a matter of fact the foregoing comments of Manresa are really superfluous, for the acts of the contracting parties prior to the execution of the

contract are included as a part of the transaction itself in the word "contemporaneous" employed by the law.

Now then, to review the history of this contracts: It appears that on June 17, 1917, in a letter addressed to the Bank by the Vice-President of the Philippine Trust, Mr. W. D. Clifford (Exh. "F-1"), the latter agreed in principle to take charge of the mortgage credit of the said Bank and to pay the same within 5 or 6 years, a proposition which was to be immediately submitted to the corporation for approval. Accordingly, it was submitted to the directors, and the proposition contained in the prior letter did not at all seem bad to any one, and the only objection, was to the fact that no period or certain term for the payment would be fixed (Exh. "F"). Taking together the three documents (Exhibits "F-1", "F" and "J"), it will be seen that Exh. "F", which is the link or tie between "F-1" and "J", contains the plain intention of the defendants, namely that they bound themselves to guarantee and pay the mortgage credit of the Bank, but that they requested for a period without fixed date, during which they would finance the Mindoro Sugar, subject to the obligation that if the properties were sold they would make satisfactory arrangements with the purchaser thereof for the payment of the Bank's credit.

In accordance with the foregoing text of the contract, the parties had agreed upon a "term". This is the Bank's contention and the only logical and rational conclusion.

And lest it be urged that this "term" was subject to the discretion of the respondents simply be-

cause it had no fixed date, we hasten to point out that said term necessarily had to come, for one of the following reasons: either (1) because of the prosperity of the Mindoro Sugar due to its continued financing by the respondents in which case there would have been payment even without the need of a sale, or (2) because the respondents would cease financing the Mindoro Sugar and cause the sale of its properties, or (3) because, in the last analysis, the Court would fix the said term, in the last accordance with Article 1128 of the Civil Code of the Philippines, which provides:

"ART. 1128. In cases in which although no term has been fixed by the obligation it is to be inferred from its nature and circumstances that it was intended to grant the debtor time for its performance, the extent of the term shall be fixed by the court.

"The court shall also fix the duration of the term when it may have been left to the will of the debtor."

For this reason what we have said respecting "condition" in relation to Articles 1115 and 1256 of the Civil Code of the Philippines, is not applicable to a contractual "term".

"Another example: I will pay the amount received as a loan when I please, or on the date I please. At first glance, the impulse immediately arises to deny validity to such an agreement, because the obligation seems to be placed thereby at the will of the debtor, inasmuch as by leaving to his will the fixing of the date of effectivity, it would be indefinitely postponed. There are many serious reasons against such an opinion. The first is that what is left to the discretion of the debtor is really not the obliga-

tion, but the time of its fulfillment. The debtor binds himself to carry out his undertaking, thus giving rise to a juridical action, unlike the case wherein the latter remains subject to his own determination, as in the example: "I will pay if I please", or "If such is my will", wherein the agreement affects the essence of the obligation and the latter is left at mercy of the obligee. In one case, the obligation exist, it has already been created; in the other, the obligation, its birth and existence, is linked with the whim or caprice of him who should properly comply with it. The second reason is that there really is no such indetermination as to time, because as regards an obligation to be fulfilled during the life time of a person, the day of compliance would necessarily have to arrive, on the day of his death; this would have to be the maximum and fatal limit for the existence of the obligation and, from that moment, his heirs would become subject thereto, as a pure and simple obligation. And the third reason, which is no less convincing, is the non-existence of indetermination in the period of obligations under Spanish Civil Law; for, according to the second paragraph of article 1128, the Courts may fix the duration of the period when the latter has been left to the will of the debtor.

"If the time or duration of the contract is not within the purview of article 1256, the same is true of its term of extinction. This may be made subject to the will of one of the parties through express agreement, without thereby destroying the purity and the life of the stipulation. The same example of loan hereinbefore cited may be given: If I can return the amount when I please, it shall be within

my power to extinguish the contract, which does not affect in any way the validity and effect of the obligation. There may be, and in fact there actually are, lease contracts whose termination is left by stipulation to the will of either the lessor or lessee, and this does in no wise mean a vitiated agreement. Likewise, upon receiving an amount as a loan 'for such time as I please.' I contract the obligation of returning it, said return being equivalent to a fulfillment of the obligation. I may delay a long time, or I may not; when I bind myself to return it, which is a case different from that in which the delivery or non-delivery of the amount received remains subject to my will."—*20 Scaevola, Código Civil, pp. 516-517.*

The reciprocity and justice spoken of at the beginning of this argument may only be found in the fact that the parties had agreed upon a "term", which might be more or less long, according as the financing of the Mindoro Sugar proves useful or not, a fact not lying absolutely at the mercy of the respondents, for the payment of a credit, in exchange of which term the Bank assigned its right to immediate collection. And for this reason, the more carefully the contention of the defedant is examined, the more absurd and illegal does it appear; whereas the interpretation of the Bank becomes, upon closer scrutiny, more logical and more in accordance with law.

## VII

**Every contract should be interpreted in such a way as to make it effective.**

The decision of the respondent Supreme Court

overlooks, among others, the rule of legal hermeneutics established in Article 1284 of the Civil Code of the Philippines:

"Article 1284. If any stipulation of a contract should be susceptible of different meanings, it shall be understood in the sense most adequate to give it effect."

It has already been seen that clause 2, when given the interpretation upheld by the decision of the respondent Supreme Court is rendered not only practically ineffectual but completely null, and the obligation therein contained thus becomes non-existent. But this result should be avoided whenever it is reasonably possible to do so.

"Every intendment is to be made against the construction of a contract under which it would operate as a snare."—*Utley v. Donaldson, 94 U. S. 29, 24 L. ed. 54.*

"Where a contract is open to two constructions, by one of which it would be lawful and the other unlawful, the former construction should be adopted." —*Hobbs v. McLean, 117 U. S. 567, 29 L. ed. 940.*

"The court should construe an instrument in cases of doubtful construction, ut res magis valeat, rather than annul it by fanciful criticism."—*Dundas v. Hitchcock, 12 How. 256, 13 L. ed. 978.*

"A construction which will render an instrument operative will be preferred over one which render it void, where the two are equally consistent with its language."—*Ewing v. Howard, 7 Wall. 499, 19 L. ed. 293.*

A Spanish commentator has well said:

"In Law 80 De Verborum Obligationibus of the Digest, there is found a classical text, from which the rule under consideration has been taken: *Quoties in stipulationibus ambigua oratio est, commodissimum est id aecipi, quo res, qua de agitur, in toto sit.* Whenever there is an ambiguous sentence in a stipulation it is advisable to interpret it in such a way as to render effective that of which it treats.

"It should be presumed", as Garcia Goyena says "that upon entering the contract the parties seriously and deliberately have, as an object, something effective and not something imaginary or impracticable.

"The fundamental rule of interpretation reduces itself to discovering the intention, and it should be presumed that when the parties bound themselves they had one"— *20 Scaevola, Codigo Civil pp. 846-847.*

The Supreme Court of Spain is of the same opinion:

"The interpretation of every contract should tend to avoid its inefficacy for its executing parties should rationally be presumed to have intended that it should be effective."—*Decision of the Supreme Court of Spain of March 10, 1920.*

What efficacy does or did clause 2 have for the Bank in whose favor it was executed, when interpreted as the decision of the respondent Supreme Court has? None.

On the other hand, the rational interpretation of the Bank, which compensates rights and obligations, benefits and risks—for it should be remembered that, according to the interpretation of the

respondents, all the benefits were for them and all the risks for the Bank— is completely in conformity with equity, reciprocity and the law requiring that all contractual obligations be given due effectiveness. It is the only interpretation by means of which clause 2 may be given effect.

## VIII

**The sale of the properties to the Archbishop by the trustees is the result of the work of the respondents, as bondholders, and at any rate, the consequence of their neglect and anticipated breach of contract.**

An aforecited authority commenting on the rules of legal hermeneutics contained in the Civil Code of the Philippines has this to say:

"The work of a lawyer when interpreting contracts submitted for his consideration, is not that of the jurist who applies a rule to a known and proven fact, but that of the psychologist, who perceives in the words, in the acts and in any other preceding, contemporaneous or subsequent circumstance, a reflection of the spiritual impulse which brought the contract to life.

"And it is also the work of a logician, because the laws preceding the mental proceess of the contract, which vary according to the nature of the latter and the position of the actors, must necessarily be deduced from the known acts, thus running the risk of every inductive process when operating on fragile and moveable elements."—*20 Scaevola, Código Civil p. 824.*

Undoubtedly, one of the circumstances which

can most help in ascertaining accurately the intention of the parties, is the status and condition of the latter in relation to themselves and, above all, in relation to the juridical act involved.

From the exhibits presented by both parties the following facts may be gleaned:

That the Mindoro Sugar issued bonds in the amount of $1,500,000.00 dollars (₱3,000,000.00) in 1917; that the Philippine Trust was the trustee of the property of the Mindoro Sugar (Exh. "A") and furthermore, that it had guaranteed the payment of the bonds, (Exh. "D"); that in 1923 the Union Insurance were the holders of said bonds (Exh. "E"); that in 1929 the Philippine Trust was already the holder of bonds in the amount of $782,000.00 (₱1,564,000.00) and the Monte de Piedad bonds in the amount of $371,000.00 (₱742,000.00) (Exh. "F"); and that only the remaining $447,000.00 (₱894,000.00) continued to be held by the Union Insurance; that in 1922 the Philippine Trust took possession of the properties of the Mindoro Sugar and thenceforth managed the same for a brief period of time jointly with the Bank and the Union Insurance, later with the latter only, and still later, alone; finally that, apart from the bonds it held, the Philippine Trust succeeded in obtaining a credit against the Mindoro Sugar in the amount of ₱5,490,481.25 (Annex B of Exh. "Q").

What do the foregoing facts mean?

Simply this: that the naked truth hidden behind the juridical fiction of the Mindoro Sugar is that this was an economic entelechy, that the entity which in truth disposed of its properties, was the Philippine Trust; that it had neither economic free-

dom nor the ability to act *ex sponte sua* nor true liberty in the juridical sense, for the latter requires, as all true individual or collective liberty does, the basis of an economic possibility; that the Philippine Trust and the Union Insurance had entirely in their hands (not only because the former was a trustee with very ample powers but also because both were bondholders and creditors for enormous amounts) the economic and juridical life of the Mindoro Sugar and the power to dispose at will of the rights, actions and obligations of the latter. Indeed so powerless was the Mindoro Sugar that its personality was obscured, anulled, and nobody took it into account for the purpose of the most insignificant contract regarding its property. The respondents, and especially the Philippine Trust, were not only the trustee of the Mindoro Sugar, but also its owner and master, with the same power over the properties of said company as though they really belonged to them.

An impulse, sprung from a noble sense of strict justice, tends to swerve from the absurdity to which the fictions of *professional technicism* have heretofore led the administration of law by Courts of Justice and now vigorously calls for a return to the sound principles based on the joint foundation of common sense and truth, proclaiming as an urgent necessity a resort to what is known as the rational and humanistic interpretation of laws. The object of this new attempt is not judicial discretion, as this term was understood in olden times, for, on the contrary, it includes the greatest respect of the Judge for the law; what is here demanded is that the law should cease to be a fiction, for then, rather than a means whereby justice triumphs, it becomes a formula where-

by the law is rendered a mockery. It is against all fictions created under the protecting wing of the law and behind whose mask are hidden the most repulsive acts, that the voices of the world's most distinguished professors of law are now raised as being contrary to equity and justice.

The fiction of juridical persons with limited liability owes its existence to the joint lucubrations of jurists and economists. It is true that its appearance in the world of economics has given an impetus to the development of commercial and industrial enterprises, but it is no less true that underlying that fiction is the possible development of speculation, adventure and wholesale fraud in a form heretofore undreamt.

And just as the law (and the courts interpreting the same) should uphold said fiction only in so far as it is legal and beneficial to the majority, so also when it becomes an evil and a danger thereto it should point it out as just a mere fiction, it should face the naked truth and proceed equitably in accordance therewith.

There is before us in the present case an evident example of pure fiction.

As in the old marionette theatres, the same hand and the same will moves and controls from behind the stage curtain the various dolls which appear to speak by themselves in the diverse tones feinged by the same voice, thus eliciting in the innocent and amused public the sensation of a diversity of personalities, although at the bottom of that same public's heart lies always the realization of a certain unity

of person, force and will which animates the marionettes.

This is a clear case of juridical fiction.

In Exh. "J" the respondents speak of the *event of a sale by them of the properties of the Mindoro Sugar.* And for the contracting party who acted in good faith, on the date of the execution of the contract (Exh. "J") the respondents were everything in this adventure, that is, they were really the ones who could dispose of the properties of the Mindoro Sugar. Such a party did not think at that moment that another marionette moved by the same will might appear from behind the wings in order to substitute it; and it failed to fix the term of the clause in question, because it was certain that the properties could or would only be sold on the date and in the manner desired by the respondents and because it had, in its opinion, the absolute guarantee of collection.

But what happened then? The Philippine Trust on February 1, 1929 transferred to the Archbishop of Manila for the sum of one peso and other valuable considerations all its credits against the Mindoro Sugar (Exhs. "Q" and "A"). The other *valuable considerations* cover up the fiction. Nothing is in reality transferred from the Phillipine Trust to the Archbishop, because it is publicly known in the Philippines that their interest are identical.

And on April of the same year the Philippine Trust relinquished the trusteeship of the Mindoro Sugar; and on the same date the said Philippine Trust and the Monte de Piedad, two entities controlled by the Archbishop and *holders of the bonds,*

elected as trustee the Archbishop himself (Exh. "R") who accepted his position on the same date (Exh. "S").

And again *on the same date*, the Archbishop announced the sale of the properties (Exhs. "L-3," "L-4" and "L-5"). The sale was scheduled for May 1, 1929. The Bank filed a protest against the sale with the Archbishop and the respondents for having made no provision for the payment of its mortgage credit (Exhs. "L," "L-1" and "L-2").

It does not appear in the record why the sale was not carried out on the date announced.

On June 14, 1929, the Archbishop of Manila resigned as trustee and on that same day the *Philippine Trust and the Monte de Piedad* elected as trustees Messrs. Francisco Ortigas, Leopoldo Kahn, Wenceslao Trinidad, Joseph Stevenot and Fulgencio Borromeo (Exh. "T"), who accepted their position immediately (Exh. "U").

On August 26, 1929, the new trustees announced the sale once again without making provision for the payment of the Bank's credit (Exh. "W"). And on November 4, 1929 the auction was held in the office of the Justice of the Peace of San Jose, Mindoro, the property being adjudicated to the Archbishop of Manila for ₱3,000,000.00 (Exh. "V"), without the latter having paid any cash in the same act, according to the deed of sale itself (Exh. "V").

Leaving aside the former arguments (as any one of them alone is sufficient ground for rejecting the interpretation placed by the decision of the respondent Supreme Court on Clause 2 of Exh.

"J") and in view of the real truth underlying the fiction above pointed out, it may not be amiss to formulate the following questions:

Who sold the properties of the Mindoro Sugar? The answer is clear: nominally the trustees, but really the agents of the respondents sold the properties, in order that with a part of the credit of the Philippine Trust, their assignee may become the owner of all the properties of the said Mindoro Sugar.

This is so, not only because the Archbishop, the Monte de Piedad, and the Philippine Trust are one and the same real economic entity, although they hide behind three distinct juridical cloaks, but also because the first trustee elected by the respondents, namely, the Archbishop, on the same day of his appointment decided upon the sale of the properties, all of which presupposes a previous agreement, and because, although the Philippine Trust only received ₱1.00 and other valuable considerations, it did not even raise the question as to whether its bonds had legal preference over the rights which it had transferred to the Archbishop, * and lastly because the second trustee elected by them also immediately proceeded with the sale. All this indicates that the trustees were chosen by the respondents only for the purposes of carrying the sale into effect.

And who bought the property? The Archbishop, with the preferred crop loan advances of the Philippine Trust.

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* The credit of ₱5,500,000.00, which the Philippine Trust transferred to the Archbishop of Manila is not a

And what did the agents of the respondents sell to the Archbishop?- The properties of the Mindoro Sugar. For although the Philippine Trust assigned its credits to him, inasmuch as the latter were on said date much greater than the value of the properties of the Mindoro Sugar, when it transferred to him said credits, it was *ipso facto* really transferring the properties themselves.

In view of all this, which sounds very much like a comedy, (and which would not have been necessary, unless the intention was to evade the payment to the Bank of the mortgage loan amounting to ₱250,000.00 guaranteed by clause 2 of Exh. "J") not only the law, but even the slightest sense of equity rejects the possibility that such fiction should triumph over the truth to the prejudice of a clear right belonging to the plaintiff.

The transfer by the Philippine Trust to the Archbishop of a big preferential credit (five million pesos, Philippine Currency), without the inclusion of an adequate clause for the protection of the Bank in the event of the realization of the

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preferred claim as per Sections 2 and 12 of Article IV of the Deed of Trust (Exh. "A", Record pages 57 and 64). It can be gleaned from the cited sections of the aforesaid Deed of Trust that the losses which the trustee suffered in operating the Mindoro Sugar affairs, called "expenditures and advances," in Exhibit "Q-a", or crop loan advances in Exh. "K-1", and its interests are not preferred claims. The financing by the Philippine Trust was made by virtue of Exhs. "C", "J", and "K" (Record pages 80, 110, and 113). Upon the other hand, it would be absurd to interpret the Deed of Trust in such a way

impending sale, was clearly concocted for the only purpose of alleging, as it is now alleged, that it was not the respondents who sold the properties of the Mindoro Sugar and who thus left unprotected the credit of the Bank, which the latter had refused to assign to them for the sum of ₱13,000. But the fallacy of that argument is evident: 1. The trustee is only an agent or instrument of the respondents. 2. If the Archbishop was a creditor for the sum of five million pesos and was able to cause the sale of the properties in question in order to buy them at the auction, it was by virtue of an assignment and as the successor in interest of the Philippine Trust. 3. The unprotected condition of the Bank's credit is the result of respondents' neglect and abandonment.

It is useless to allege that the respondents could do nothing after the assignment of the five-million-and-a-half credit by the Philippine Trust to the Archbishop, firstly, because they were the ones entitled to elect a trustee, as holders of the great ma-

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as to authorize the trustee to operate the Mindoro Sugar for years and years. It is reasonable to suppose, and in fact the Deed of Trust only permits that this operation be made in case of default or violation of the obligation of the Mindoro Sugar, and then, only upon petition of the holders of bonds amounting to 25% of all outstanding bonds and provided the properties covered by the Deed of Trust be preserved and sold for the payment of all the obligations of the Mindoro Sugar. Advances may be made for the preservation of the properties of the Mindoro Sugar or in order that its pending business may be continued to a successful end, as, for example,

jority of the bonds, and the ones who could well choose the person most likely to make good the promise made by them; and secondly, assuming that because of said assignment it was impossible for them to do anything for the Bank's credit, the act of rendering impossible the fulfillment of their obligation contracted by them is an anticipated breach thereof.

The respondents accepted the duty of seeing to it that the infant, namely, the Bank's second mortgage, should live. The fact that one of them relinquished, without reservations, the means whereby it could watch over the life of such infant, and the fact that both lay back idle, instead of lending a helping hand, when the infant's life was being threatened with a sale whose conditions did not include the protection of the Bank's mortgage credit, are not excused for their failure to comply with their duty. They are certainly not excuses, but, on the contrary, acts and omissions violative of the obligation they contracted.

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the preservation and milling of the standing sugar crop. But no new capital could be invested for new crops, business, or enterprises such as the planting of a new crop, the buying of new equipments, etc., because these acts were alien to the duties of the trustee under the Deed of Trust. In fact, the Deed of Trust does not authorize the trustee to hold the properties of the Mindoro Sugar for years and years and in that manner to carry and operate new enterprises and later on charge the losses of the adventures as a preferred claim over and above the bonds issued under the Deed of Trust as well as the second mortgage in favor of the Bank.

"Our third conclusion is, that as the old Company totally abandoned the performance of its contract with the complainant by transferring all its assets and obligations to the new company, and as the contract is executory in its nature, the complainant had a right to consider it as determined by the act of the Company and to demand what was justly due to him in the exigency. Of this we think there can be no doubt. Where one party to an executory contract prevents the performance of it, or puts it out of his own power to perform and demand whatever damage he has sustained thereby. We had occasion to examine this subject in the recent case of U. S. v. Behan (ante, 168) to which we refer. It is unnecessary to discuss it further here."—*Lovell v. St. Louis Mut. Life Ins. Co., 111 U.S. 264, 28 L. ed. 423, text 426.*

See also U. S. v. Pick, 102 US 64, 26 L. ed. 46; Wareen v. Stodart, 105 US 224, 26 L. ed. 1117; U. S. v. Behan, 110 US 338, 28 L. ed 168; Roem v. Hurt, 178 US 1, 44 L. ed. 953.

## PRAYER

WHEREFORE, it is respectfully prayed that this Honorable Court grant the foregoing petition for a writ of certiorari to review the decision of the Supreme Court of the Philippines and reverse the same, with instructions to grant the plaintiff the damages suffered by it in accordance with the measure provided for in Exh. "B", with costs.

RAMON DIOKNO
*Attorney for the Petitioner*
PNB Bldg., Escolta, Manila

I hereby certify that I have been served with three (3) copies of the Transcript of Record on May 21, 1940 and three (3) copies of this Petition and Supporting Brief, on May ——, 1940.

GIBBS & McDONOUGH
*Counsel for Respondents.*

By:

.....

FILED
JUL 26 1940
CHARLES ELMORE CROPLEY
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM 1940

No. 119

PHILIPPINE NATIONAL BANK,
*Petitioner,*

*versus*

PHILIPPINE TRUST COMPANY AND INSURANCE SOCIETY OF CANTON, LTD.,
*Respondents.*

## RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ALLISON D. GIBBS
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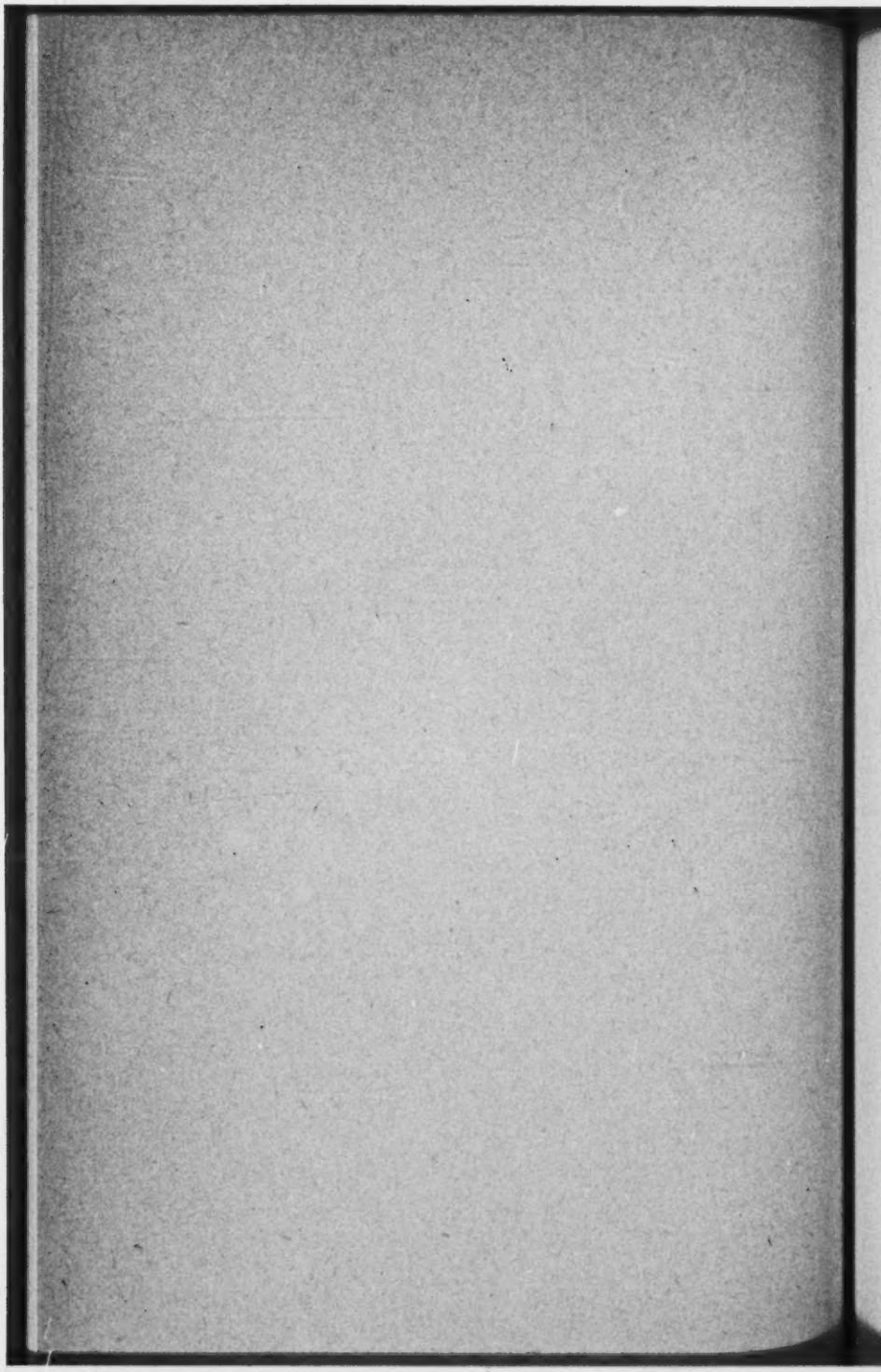
*Counsel for Respondents*



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# In the Supreme Court of the United States
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PHILIPPINE NATIONAL BANK,

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PHILIPPINE TRUST COMPANY and INSURANCE SOCIETY OF CANTON, LTD.,

*Respondents.*

## RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI (*)

Respondents oppose the petition for writ of certiorari and pray that the same be denied for the following reasons:—

1. The petition is entirely without merit.

2. The only reason stated for the allowance of the writ is that "the decision of the Supreme Court of the Philippines *has departed from the accepted and applied principles and mandates of law and equity*, an action which justifies the exercise of this Honorable Court's power of supervision." (Pet. p. 26.)

3. The only questions raised by the petition are of fact and interpretation of documents, and all of which questions were resolved by the Court of First Instance and the Supreme Court against the contention of petitioner. (Pet. pp. 28-30.)

4. The supporting brief violates Clause (d), Paragraph 2 of Rule 27 in that it does not contain a concise statement of the case.

(*) Italics ours throughout.

## STATEMENT OF THE CASE

Petitioner, the Philippine Government Bank, sued for and failed in both the Court of First Instance of Manila and the Supreme Court of the Philippines to recover damages of Two Hundred Fifty Thousand Pesos (₱250,000.00), Philippine Currency, plus legal interest, for the alleged breach of a contract dated September 1, 1924, between petitioner and respondents, marked Exhibit "J." (R. 110-115.)

The respective contentions of the parties are set forth with sufficient clarity in the amended complaint of February 2, 1935 (R. 2-7) and in the reamended answer of May 31, 1935 (R. 8-13), supplemented by the amendment of Clauses 3 and 4 of the First Special Defense and of Clause 3 of the Second Special Defense of said reamended answer, with the consent of petitioner, to conform to the agreed facts as set forth in Paragraph 21 of the Stipulation of Facts. (R. 24-26.)

## COUNTER-STATEMENT OF ESSENTIAL FACTS (*)

In view of the fact that petitioner's statements under the caption "Statement of the Matter Involved" (Pet. pp. 2-19) and under the caption "Summary of Essential Facts" (Pet. pp. 19-21) and under the caption "Decisions of the Court of First Instance of Manila and of the Supreme Court" (Pet. pp. 21-23), consist of extracts, excerpts and, in some instances, copies in full of certain selected parts of the documentary evidence attached to the Stipulation of Facts, interspersed with argumentative comments and of insignificant excerpts of said decisions of the Court of First Instance and of the Supreme Court, and which extracts,

(*) All exhibits will be referred to by the letter designations used in the Stipulation of Facts. (R. 27-165.)

excerpts and copies on the whole tend to confuse rather than clarify the stipulated facts and record, respondents submit the following counter-statement:

The facts directly controlling the question of liability or non-liability of respondents to petitioner are those recited in the agreement of September 1, 1924 (Exhibit "J," R. 110-113) in connection with the recitals of the agreement of January 5, 1923 (Exhibit "C," Record 80-83) which was cancelled in Exhibit "J." With the exception of certain undisputed stipulated incidental facts, these agreements were pleaded and relied upon by petitioner as its sole basis for recovery and by respondents as their sole ground to defeat such recovery, as disclosed by the amended complaint and by the reamended answer.

These agreements were attached to the original typewritten complaint as Exhibits "A" and "B" and referred to in the reamended answer under the same identification marks; but they are printed only as Exhibits "C" and "J" of the Stipulation of Facts. (R. 80-83; 110-113.)

The deed of trust which was attached to and made a part of the original typewritten answer as Exhibit "1" is printed in the record only as Exhibit "A" of the Stipulation of Facts (R. 27-76), while the second mortgage of Two Hundred Fifty Thousand Pesos, Philippine Currency, sought to be collected by petitioner from respondents in this action is printed as Exhibit "B" of the Stipulation of Facts. (R. 76-80.)

The decision of the Court of First Instance of Manila (R. 165-185) contains a statement of all the pertinent facts necessary to a correct determination of the case. The decision of the Supreme Court of the

Philippines (R. 208-240) affirming that of the lower court, also contains a more comprehensive statement agreeing in all respects with that of the Court of First Instance except as to a clerical error to which we called attention in our answer to petitioner's motion for reconsideration before the Supreme Court of the Philippines. In this clerical error, no doubt attributable to the typist, Exhibit "F-1" was confused in the findings with Exhibit "F" and the Court was made to say:

> "This letter Exhibit F-1 was submitted to the Board of Directors of the plaintiff Bank on July 18, 1924 (Exh. G) which accepted the propositions therein contained, except paragraphs 3 and 4 which it wanted understood and read as follows: etc." (R. 228.)

In the answer to petitioner's motion for reconsideration, respondents referred to the foregoing clerical error as follows:

> "Before closing, we wish to call the attention of this Honorable Court to the fact that it was Exhibit F and not Exhibit F-1 which was referred to in Exhibits G, H and I and I-1 and which was incorporated with some modifications into Exhibit J. On pp. 17 and 18 of its decision, this Honorable Court quotes Exhibit F-1 which reads as follows:
>
> "Exhibit F-1
>
> "(This exhibit is literally and fully copied in the decision of the Supreme Court of the Philippines dated May 12, 1939, pages 227 to 228 of this transcript.)
>
> "This Honorable Court then states: 'This letter Exhibit F-1 was submitted to the Board of Directors of the plaintiff bank the 18th of July, 1924 (Exhibit G) and the propositions contained therein were accepted with the excep-

tion of those contained in paragraphs 3 and 4 which it wished to be understood and read as follows: * * *. An inspection of Exhibit G shows that it was Exhibit F and not Exhibit F-1 which was considered at the Board of Directors' meeting recorded in Exhibit G. Exhibit F-1 was rejected in toto by the Board of Directors of the defendants and Exhibit F was submitted to the Philippine National Bank in its place before the Board of Directors' meeting recorded in Exhibit G was held. Exhibit F reads as follows:

"Exhibit F.

"(This exhibit is literally and fully copied in the documentary evidence of this case, pages 100 to 102 of this transcript.)

"Exhibits G, H, I and I-1 all refer to Exhibit F and not to Exhibit F-1. This letter Exhibit F shows clearly the defendants' refusal to guarantee the second mortgage of the plaintiff. (Pages 3-6, Answer to Motion for Reconsideration.)" (R. 244-245.)

While more appropriately a part of the argument, we add to the foregoing as a matter of sequence the following comment:—

In view of the fact that Exhibits "F" and "F-1" were mere negotiations leading up to the agreement Exhibit "J" of September 1, 1924, and were necessarily merged in that agreement, the clerical error in the decision after explanation is of no moment. Exhibits "F," "F-1," "G," "H," "I," and "I-1" cited in the petition under the caption "Statement of the Matter Involved" at Pages 5-9, are incompetent except as they may throw light if any on Exhibit "J" which is clear in itself and in which those exhibits are merged.

For the sake of brevity, we adopt as our counter-statement of facts the statements of both the Philippine Courts except the clerical error of the decision of the Supreme Court above specified, pointing out at the same time that those statements with the exception noted though more comprehensive agree in substance with the first and second special defenses of the reamended answer.

To guide the Court to some extent in checking up some of the documentary evidence supporting the contention of respondents, we point out that paragraph 1 of the first special defense (R. 8-10, 24-25) is supported by Exhibit "A" attached to the Stipulation of Facts, the document marked Exhibit "1" in said paragraph 1 having been printed as Exhibit "A" of the Stipulation of Facts.

Paragraph 2 of the first special defense is supported by Exhibit "E" of the Stipulation, offered in evidence by petitioner (R. 97) and by the statement of petitioner in Clause 3, Page 3 of its Petition.

Paragraphs 3 and 4 of the first special defense are supported by Exhibits "P," "Q," "A" of "Q" and "B" of "Q," "R," "S," "T," "One," "U," "V," "W," "L-3" to "L-6," "M" and "N." (R. 145-146; 147-148; 149-151; 151-153; 153-155; 155-157; 157-159; 159-160; 160-161; 162-164; 164-165; 125-131; 131-136; 136-139.)

A connecting link in the facts not mentioned in the re-amended answer of respondents is that the Philippine Trust Company as Trustee sold and assigned to the Right Reverend M. J. O'Doherty, the Roman Catholic Archbishop of Manila, a corporation sole, ₱5,490,481.25 of its preferred claim as Trustee against the Mindoro Sugar Company "for expendi-

tures and advances made as Trustee." When the Archbishop bought the property on its sale by his successors as Trustees, he applied the amount bid by him on account of the preferred claim for advances acquired as aforesaid. (See Exhibits "A" of "Q," and "V"; R. 149, 162.)

The second special defense (R. 10-13, 25-26) is based on the exhibits therein mentioned but such exhibits are found in the printed record under changed markings as follows: Exhibit "A" printed as Exhibit "C" and Exhibit "B" printed as Exhibit "J."

At this point, respondents call attention to a statement at Page 14 of the Petition which might be considered equivocal and hence misleading. Petitioner says:

> "Even if the deed of transfer says that the foregoing is a 'preferred claim,' it can be observed that this 'preferred claim' is not included as such under Section 10 of Article 2 of the Deed of Trust. (Exh. 'A,' page 27.)"

Notwithstanding the foregoing statement, the preferred character of the claim of the Trustee for advances is clearly provided by the first paragraph of Section 12. (R. 64-65.)

In view of the circumstance that there are no disputed facts in the case but only a disputed interpretation of Exhibit "J," and particularly Clause 2 thereof, as shown by the decisions of the Court of First Instance and of the Supreme Court of the Philippines and as emphasized by the fact that such disputed interpretation is the sole ground for petitioner's only assignment of error (Brief, p. 28), and in view of the further circumstance that no other findings of the decisions of said courts are directly challenged by the

petitioner, respondents will make no further comments on the contents of the petition except incidentally in connection with their argument.

## ARGUMENT

### POINT 1.

#### The Petition Is Entirely Devoid of Merit.

Petitioner under the caption "OUR FUNDAMENTAL CONTENTION — THE NULLITY OF THE CONTRACT SHOULD NOT BE DEDUCED IF THERE IS A REASONABLE MEANS OF UPHOLDING ITS VALIDITY" (Pet. pp. 24-25), says:

> "As may be observed, the decision of the Honorable Supreme Court of the Philippines hinges upon the argument that the purchase of the properties of the Mindoro Sugar was optional on the part of the respondents, who were the holders of the bonds and who had in their hands the life and death of the Mindoro Sugar and the control of its trustee; that it was also optional on their part to sell them afterwards; that, hence, it was optional on the part of said respondents to comply or not with the obligation they contracted of providing for the payment of the plaintiff's credit, and that, therefore, they could shirk with impunity the control which they exercised over the business and leave the plaintiff entirely helpless as regards the collection of his credit, or likewise lie back idle in the event of the sale of the Mindoro Sugar properties." (Pet. p. 24.)

This eloquent plaint which creates straw men only to demolish them might even excite sympathy for petitioner if it had the slightest foundation in truth or in fact, that is to say, either in the obvious purpose or in the reasonable interpretation of the second clause

of Exhibit "J." This obvious purpose and reasonable interpretation are clearly set forth in the second special defense of the reamended answer (R. 10-13), supplemented by its amendment in the Stipulation of Facts as aforesaid (R. 25-26) and are, as previously stated, accepted in substance in both the decision of the Court of First Instance of Manila (R. 165-185) and that of the Supreme Court of the Philippines affirming it (R. 208-240). Nevertheless, the petitioner has studiously refused to understand or discuss such obvious purpose and reasonable interpretation although expressed in the simplest form of which the English language is capable. (See entire supporting brief of petitioner, p. 28, et seq.)

**Contention of Petitioner too General and Indefinite to Admit of Brief Answer**

Respondents frankly confess that they have been unable to find within the seventy-three pages of the petition and supporting brief any concise, definite statement of the contention of petitioner which is even remotely supported by the stipulated facts.

The only statement which approaches conciseness is the paragraph at the bottom of Page 29 of the Supporting Brief as follows:

> "In opposition to this interpretation, the Bank contends that the true intention of the parties in stating that the defendants herein acknowledged its second mortgage and that in the event of a sale were bound to make satisfactory arrangements with the purchaser for the payment of such mortgage credit, was not the creation of an obligation subject to a suspensive condition, but the creation of one subject to a period or term whose date or mode of payment was not fixed."

The statement just quoted is so utterly at variance with the literal and obvious meaning and interpretation of Clause 2 in relation to Clause 5 of Exhibit "J" that its strongest impeachment lies in a simple comparison of its language with the language of the contract itself, without the necessity of going into the reasons for the optional, conditional character of the obligation which are equally incompatible with the quoted statement. All the remainder of the petition and supporting brief consists of inapplicable generalizations and technical dissertation in the nature of a lecture on the subject of contracts. However, based upon the last quoted statement (Pet. p. 29) and the previously quoted declaration of petitioner's "fundamental contention" (Pet. p. 24), accompanied by petitioner's only specification of error (Pet. p. 28), followed by the caption "the interpretation accepted by the decision appealed from is absurd" (Pet. p. 30) and the authorities cited on Page 31 and at intervals throughout the remainder of the brief on the subject of treating certain obligations as absolute notwithstanding the use of conditional phrases in the recital thereof, the only conclusion we can reach is that petitioner's true contention, in a word, is that the obligation to arrange for payment in Clause 2 in relation to Clause 5 of Exhibit "J" is absolute. In the absence of anything more definite or concise in the petition and supporting brief, respondents have nothing more tangible than this conclusion to answer and, if they are to offer any assistance to the Court, they are driven to the necessity of simply taking the negative of petitioner's general contention by stating as many of the facts and reasons as suggest themselves why the optional, conditional obligation of Exhibit

"J" is optional and conditional, which is something like arguing the self-evident propositions that white is not black and that daylight is not darkness. The greatest objection to this form of answer on the part of respondents is that it must necessarily consume more space than is sanctioned by the Rules of this Court.

Analyzing further petitioner's "fundamental contention" (Pet. p. 24) in which straw men dominate, let it be said: "The nullity of the contract" (Clause 2 of Exhibit "J") was not "deduced" by the Philippine Supreme Court or sought by respondents. On the contrary, its validity was upheld by that Court. In so upholding the validity of Paragraph 2 of Exhibit "J," the Supreme Court upheld the contention of respondents that the purchase as well as the sale of the properties of Mindoro Sugar Company was entirely optional with them (respondents).

Respondents have not contended and the Philippine Courts have not held that "it was optional on the part of said respondents to comply or not to comply with *the obligation they contracted of providing for the payment of the plaintiff's credit*" because respondents did not contract any obligation "*providing for the payment of plaintiff's credit.*"

Respondents did agree conditionally as provided in Clause 2 of Exhibit "J":

> "2. The Second Mortgage of ₱250,000.00 of the Philippine National Bank *to be recognized by the parties of the Second and Third Parts in the event of a sale of the properties of the Mindoro Sugar Company by the said parties when provision will be made whereby the purchaser*

*will make satisfactory arrangements for the payment of the amount of the Mortgage of the Philippine National Bank.*" (R. 111.)

Attention is called to the fact that although the "Philippine Trust Company, Trustee Mindoro Sugar Company," was the Party of the First Part of Exhibit "J," the conditional obligation of Clause 2 thereof was expressly limited to the respondents as parties of the second and third parts, leaving the Trustee entirely free therefrom.

Aside from the fact that no attempt was made to obligate the Trustee by the terms of Exhibit "J" except to evidence its consent to the agreements of the other three parties, it is clear that the Trustee as the representative of Mindoro Sugar Estate for the benefit of the bondholders had no power or authority to obligate itself as did the other three parties by the terms of Clause 2 of Exhibit "J."

It is an indisputable fact that the title of the Philippine Trust Company as Trustee to the property of Mindoro Sugar Company could not be considered as inuring to the benefit of the respondents for the purpose of "a sale of the properties of the Mindoro Sugar Company by the said parties" (of the second and third parts) as provided in Clause 2 of Exhibit "J." (Decision Supreme Court, R. 236.)

This supports the contention of respondents and the opinions of the Court of First Instance and Supreme Court that both the acquisition and sale of the property were conditions indispensable to any obligation of respondents to make arrangements with a buyer about the payment of the second mortgage. (R. 183-184; 234-240.)

It is, therefore, clear that even though the Philippine Trust Company had not resigned but had continued as Trustee until after the sale of the property under the Trust Deed, such sale would not have created any liability on the part of respondents under Clause 2 of Exhibit "J." The sale and, therefore, the acquisition had to be made by respondents themselves who were the parties of the second and third parts in Clause 2 of Exhibit "J."

**Refutation of Petitioner's Specification of Errors.**

Petitioner opens its supporting brief with the following:

"SPECIFICATION OF ERRORS

> "The Supreme Court of the Philippines erred in not declaring that the respondents contracted a valid obligation by virtue of Clause 2 of Exh. 'J' in relation to Clause 5 of said exhibit and that by transferring a part of their credits to the Archbishop of Manila and by ordering or acquiescing in the sale of the properties of the Mindoro Sugar by its trustees, without making satisfactory arrangements for the payment of the mortgage credit in the amount of $125,000.00, U. S. Cy., (₱250,000, Philippine Currency), they have committed a breach of contract and defrauded as well as damaged the Bank in the above indicated sum together with the interest and attorney's fees as provided in Exh. 'B'." (Pet. p. 28.)

Before proceeding with the refutation of the foregoing specification of error, we present in chronological order a brief summary of the more essential facts which should be kept in mind in the consideration of the petition, as follows:

**Chronological Summary of Facts**

(a) On December 21, 1917, the Mindoro Sugar Company executed a Deed of Trust in favor of the Philippine Trust Company as Trustee for the bondholders secured by a first mortgage on the property rights and franchises of said Mindoro Sugar Company to meet the payment of the bonds and interest. (R. 27-76.) This Trust Deed also provided that all the expenses and advances of the Trustee in the operation of the trust estate should constitute a lien on the property with preference over the other obligations secured by such Trust Deed (Article IV, Section 12, first paragraph; R. 64-65).

(b) On April 14, 1921, a second mortgage was given on the same property by the Mindoro Sugar Company to petitioner to secure the payment of ₱250,000.00. This mortgage expressly recognizes the priority of the Deed of Trust (Exhibit "A").

(c) On December 31, 1921, the Mindoro Sugar Company defaulted in the payment of the semestral interest due on the bonds secured by the trust deed.

(d) In September, 1922, the Philippine Trust Company as trustee took possession of the property of the Mindoro Sugar Company pursuant to the terms of the trust deed and began the operation thereof.

(e) The Mindoro Sugar Company also defaulted in the payment to petitioner of the obligation secured by the second mortgage.

(f) On January 5, 1923, the plaintiff and the respondents entered into the agreement Exhibit "C" (R. 80-83) for the purpose of further financing the operation of the property in an effort to insure the payment of the obligations under the trust deed Exhibit "A" and petitioner's second mortgage and in the

hope that they would, in addition, be able to make a profit therefrom. In order to obtain any profit which might arise from the successful operation of the property, Exhibit "C" provided that the Mindoro Sugar Company should be divested of all of its interest in the property through the foreclosure by petitioner of its second mortgage (R. 82). Petitioner agreed to bid the property in at the foreclosure sale and transfer the title to the property so obtained to a partnership or corporation to be known as the San Jose Development Company which was to be composed of petitioner and respondents as equal partners (R. 82). To compensate petitioner for the extinction of its second mortgage, the San Jose Development Company was to give it another second mortgage on the property for the sum which might be bid for the property by petitioner at the foreclosure sale. Respondents and petitioner were then to operate the property through the San Jose Development Company and advance the necessary funds therefor peso for peso for as long as the money should be needed. Finally Exhibit "C" expressly provided that:

> "The San Jose Development Company shall own, maintain and operate the said property, rights and franchises *subject to the Trust Deed executed by the Mindoro Sugar Company in favor of the Philippine Trust Company* under date of December 21, 1917. The income of the said company, *after providing for all interest due on the bonds* covered by the Trust Deed aforesaid, shall be applied pro rata to the payment of the advances made by the parties hereto and thereafter:

"1. To the payment of interest and other obligations as they mature under the 3,000,000 Bond Mortgage.
"2. To the payment of the amount due the Bank for the purchase price of the property.
"3. To the owners." (R. 82-83.)

(g) Though it was hoped by the parties that after the acquisition of the property its operation by the San Jose Development Company would pay them dividends, they did not intend to keep the property indefinitely. They hoped that after the property showed a profit in its operation, it would be possible for the San Jose Development Company to sell it subject to the trust deed for enough to pay off petitioner's second mortgage and give the parties a profit. Exhibit "E," a memorandum of Mr. M. H. O'Malley, an officer of the Philippine Trust Company (R. 97-101), which was offered in evidence by petitioner, expressed the hope and outlined the anticipated procedure.

> "When execution is accomplished on this mortgage, the property covered thereby will be bid in by the operating partnership, operated for joint account under our said agreement until such time as it shows a profitable out-turn, and then sold, any profit resulting to be divided equally between the Bank, the Union Insurance Society of Canton, and the Philippine Trust Company." (Exhibit "E," R. 99.)

(h) Pursuant to Exhibit "C," petitioner obtained a judgment of foreclosure on its second mortgage. This judgment expressly recognized the priority of the Trustee's rights under the trust deed (Exhibit "D-1," R. 91-95). However, petitioner did not proceed to the sale of the property as provided in Exhibit "C" because it wished to withdraw from that agreement.

(i) Thereupon, petitioner negotiated for its withdrawal from Exhibit "C" and incidentally for the disposition of its second mortgage. Respondents' executive officers in an excess of optimism with reference to the value of the property mortgaged suggested that respondents take over and pay petitioner's second mortgage (Exhibit "F-1," R. 103-104). This proposition was, however, promptly rejected by respondents' boards of directors and the letter Exhibit "F" (R. 101-103) was then written to petitioner in which the following significant statement was made:

> "Referring to letter addressed to you on June 17th by Mr. W. D. Clifford, Vice-President of the Philippine Trust Company, and Mr. H. Hunter, Branch Manager of the Union Insurance Society of Canton, Ltd., regarding Mindoro Sugar Company, we beg to state that we are not agreeable to proposition set forth in the said letter in the form submitted. We are of the opinion, after receiving legal advice, that the agreement entered into on January 5, 1923, by and between the Philippine National Bank, the Union Insurance Society of Canton, Ltd., and the Philippine Trust Company regarding the financing of Mindoro is binding upon the National Bank and that it can not be relieved of its responsibility thereunder without consent of our respective companies. We are further of the opinion that the bondholders of Mindoro are under no obligation with respect to the mortgage held by the National Bank and we can not see our way clear to guarantee the payment of said mortgage at any particular time." (R. 101-102.)

Respondents, however, were willing to release the petitioner under certain conditions from its obligation

to assist in the financing of the property after the existing crop was harvested.

(j) As a result of the aforesaid negotiations, petitioner and respondents, on September 1, 1924, entered into the agreement Exhibit "J" which had for its main purpose the cancellation of Exhibit "C." Exhibit "J" provided that the petitioner should only "continue to advance one-third of the expenses necessary for the carrying on and operation of the Mindoro Sugar Estate until the crop at present in the field is harvested" (R. 112). Petitioner was fully protected as to the above advance as well as to previous advances by the fact that all advances for the operation of the property were preferred by the terms of the trust deed (Section 12, Article IV, Exhibit A; R. 64-65) and also by the provision of paragraph 4 of Exhibit "J" which reads as follows:

> "If the share of the said proceeds pertaining to the Bank should not be sufficient to cover the advances made by the said Bank, the balance unpaid shall be paid to the Bank out of the proceeds of the 1925-1926 crop and further that if the advances already made for the 1923-1924 crop shall not have been fully paid, including interest, any balance unpaid shall be paid to the Bank out of the proceeds of the said 1924-1925 crop, and if the same is not totally paid to the bank out of the proceeds of the said 1924-1925 crop, the balance owing shall be paid out of the proceeds of the 1925-1926 crop. If the proceeds of the sale of said 1925-1926 crop are not sufficient to cover the unpaid balance, the Philippine Trust Company, as Trustee, shall execute a chattel mortgage on the subsequent crops until the whole amount due, with interest, is paid." (R. 112.)

Respondents still clung to the idea that they might make a profit out of the operation of the property. (See Exhibit "E," Record 97-101.) For that reason paragraph 5 was inserted in Exhibit "J" to provide respondents with the machinery, if they wished to use it, for obtaining title to the property subject to the trust deed.

> "5. The foreclosure proceedings instituted by the Bank shall remain in statu quo as long as the Philippine Trust Company and the Union Insurance Society of Canton, Ltd. continue to finance the crop and operation of the Mindoro Sugar Estate with the understanding that if at any time the Philippine Trust Company and the Union Insurance Society of Canton, Ltd., or either one, desire it, the Bank will proceed to the sale of the properties under the judgment of foreclosure or will assign the said judgment to the Philippine Trust Company and the Union Insurance Society of Canton, Ltd., or to either, or their nominee as they or either one may desire." (R. 112-113.)

The acquisition of the title to the property was made entirely optional with respondents. Petitioner was protected as to the above quoted clause 5 of "Exhibit "J" in that it was required to maintain the foreclosure proceedings in statu quo only so long as respondents continued to finance the property. It was also provided that if respondents took over and made a sale of the property, they would make satisfactory arrangements with the purchaser for the payment of petitioner's second mortgage.

> "The Second Mortgage of ₱250,000.00 of the Philippine National Bank to be recognized by the parties of the Second and Third Parts in the event of a sale of the properties of the Min-

doro Sugar Company by the said parties when provision will be made whereby the purchaser will make satisfactory arrangements for the payment of the amount of the Mortgage to the Philippine National Bank." (Par. 2, Exhibit "J," R. 111.)

(k) After the execution of Exhibit "J," respondents continued to finance the operation of the property for five years advancing many millions of pesos for that purpose. (See Exhibit "A" of "Q" and Exhibit "B" of "Q" and Exhibit "R," Record 149-151; 151-153; 153-155.) Respondents finally recognized the impossibility of selling the property at a profit as contemplated in Mr. O'Malley's memorandum (Exhibit "E," supra). They did not, therefore, utilize the option of acquiring the property, contained in Exhibit "J." Respondents did, however, offer to pay ₱13,601.84 for petitioner's second mortgage for the sole purpose of utilizing the existing foreclosure judgment to sell the property for the benefit of the obligees secured by the trust deed. This would have enabled them to escape the expense and delay involved in the sale of the property under the trust deed itself. (See Exhibits "O" and "O-1"; Record 139-141; 142.) Moreover, the amount offered was less than the prospective attorney's fees and expenses of defending petitioner's threatened suit. Petitioner, after considering the offer for almost a year, on February 15, 1929 finally rejected it, giving as a ground therefor a "general understanding" with the Philippine Trust Company that its second mortgage would be paid in full. (See Exhibits "O-1," "O-2," "O-3" and "O-4," Record 142, 143, 144; and Stipulation of Facts, R. 21.)

(l) Afterwards in the same year (1929) upon the insistence of the Bank Commissioner (Exhibit "P," Record 145-146), the Philippine Trust Company gave up the financing of the property and assigned its claim for the unpaid portion of its advances amounting to ₱5,500,000.00 to the Archbishop of Manila. (Stipulation of Facts, R. 22; Exhibit "A" of Exhibits "Q" and "R," Record 149-151; 153-155.) The Philippine Trust Company also resigned as Trustee under the trust deed and the Archbishop was elected as the new Trustee. In view of the fact that almost ten million pesos was due and unpaid under the trust deed (see Exhibit "B" of Exhibits "Q" and "R," Record 151-153; 153-155), the Trustee decided to sell the property in pursuance of the terms of the trust deed and the property was, therefore, advertised for sale, but such sale was postponed and readvertized to give it more publicity.

(m) The Archbishop of Manila, after the first advertisement on June 14, 1929, resigned as trustee. New trustees were elected and after a second advertisement the property was sold on November 4, 1930, to the Archbishop of Manila for ₱3,000,000.00, leaving unpaid under the trust deed more than six million pesos including the original bond issue of ₱3,000,000.00.

(n) Inasmuch as Counsel for petitioner has gone entirely outside the record to insinuate in substance that the assignment of the preferred claim for advances by the Philippine Trust Company to the Archbishop was fictitious and collusive and for the purpose of defrauding petitioner (Pet. pp. 62-72), the undersigned claim the privilege of also going outside the record to assure the Court of their personal knowledge that when the Archbishop ascertained that the Philippine Trust Company, a banking institution in which his Diocese

was heavily interested, had made advances for the financing of the Mindoro Sugar Company which might endanger the funds of the depositors of the Philippine Trust Company, he actually bought and took an assignment of the Philippine Trust Company's claim for such advances and, at a great sacrifice to himself, borrowed at least $2,500,000.00 in the United States with which to take over the claim for advances and did actually become the owner thereof and did actually deliver the money to the Philippine Trust Company; that he has been paying interest ever since on the money thus borrowed and that the purchase of the Mindoro Sugar Estate has proven a losing investment.

**No Consideration for Clauses 2 and 5 as Interpreted by Petitioner**

Aside from the clear conditional form of the clauses, there was no conceivable motive, reason, consideration or *causa* for the agreement as construed by petitioner. One of the essential requisites of a binding agreement is *causa* (Article 1261, Philippine Civil Code).(*) *Causa* is the civil law counterpart of common law *consideration.* It may be better defined as the motive or reason for entering into a contract. We will show that there was no *causa* for the alleged agreement, not for the purpose of invalidating it, if it ever existed, but for the purpose of convincing the Court that no such agreement was ever perfected or intended to be perfected. It is inconceivable that respondents

(*) Art. 1261. There is no contract unless the following requisites exist:

1. The consent of the contracting parties;
2. A definite object which is the subject-matter of the contract;
3. A *consideration* for the obligation established.

entered into an unconditional agreement to provide for the payment of petitioner's second mortgage with out any reason therefor and while much of their preferred claim for advances to the Trustee went unsatisfied.

Another unanswerable refutation of petitioner's interpretation of Clauses 2 and 5 of Exhibit "J" is that all the obligations of petitioner as recited in Exhibit "J," and vastly more onerous obligations, had already been contracted by it in Exhibit "C" from which it was released at its own request by Exhibit "J." Hence the diminished obligations in Exhibit "J" afforded no consideration for converting the optional, conditional obligation of respondents to petitioner by virtue of Clause 2 in relation to Clause 5 of Exhibit "J" into an absolute obligation:

First.—Petitioner under Exhibit "C" was bound to assist in financing the operation, of the property indefinitely.

Second.—Exhibit "J" by its own terms expressly admitted the obligation of petitioner to finance the operation of the property for an indefinite period of time:

> "WHEREAS, by agreement made and entered into by and between the Philippine National Bank, the Union Insurance Society of Canton, Ltd., and the Philippine Trust Company under date of January 5, 1923, the said parties agreed to form a corporation for the purpose of taking over the property, rights and franchises of the Mindoro Sugar Company covered by a certain second mortgage executed by said Mindoro Sugar Company in favor of the Philippine National Bank, and to advance to said corporation Peso for Peso all sums re-

quired by said corporation for the maintenance and operation of said property, rights and franchises." (Exhibit "J," R. 110-111.)

Third.—Exhibit "J" expressly states that Exhibit "C" was being cancelled at the request of petitioner:

> "WHEREAS, the Philippine National Bank now desires to cancel said agreement, * * *." (R. 111.)

Fourth.—Exhibit "J" shows that whatever obligations petitioner assumed under it were assumed for the purpose of securing the cancellation of Exhibit "C" and not for the purpose of securing new promises from the respondents:

> "WHEREAS, the Philippine Trust Company and the Union Insurance Society of Canton, Ltd., have agreed with the Philippine National Bank to cancel said agreement under the following terms and conditions: * * *." (R. 111.)

Fifth.—As a matter of fact, however, petitioner assumed no new obligations under Exhibit "J" but instead, the obligations which it had previously assumed under Exhibit "C" were reduced and curtailed as follows:

(a) The obligation of petitioner under Exhibit "C" to assist in the financing of the property for an indefinite period of time was reduced to the obligation under Exhibit "J" to complete the financing of the existing crop;

(b) The obligation of petitioner under Exhibit "C" to carry out the foreclosure of the second mortgage, bid the property in, and transfer it to the San Jose Development Company was reduced in Exhibit "J" to the obligation to maintain its second mortgage

in status quo only so long as respondents continued to finance the property with the understanding that at the option of respondents, the property should be sold under the judgment of foreclosure or the judgment assigned to respondents.

Sixth.—Petitioner was running absolutely no risk at all under its limited obligation in Exhibit "J" to assist in the completion of the financing of the existing crop for the reasons:

(a) All advances to the trustee for the financing of the property were, under the terms of the trust deed, preferred over all other liens (Section 10, Article II and Sec. 12, Article IV of Exhibit "A," Record 54, 64-65);

(b) Paragraph 4 of Exhibit "J" made special provision for the repayment of the crop advances by petitioner as follows:

> "4. If the share of the said proceeds pertaining to the Bank should not be sufficient to cover the advances made by the said Bank the balance unpaid shall be paid to the Bank out of the proceeds of the 1925-1926 crop and further that if the advances already made for the 1923-1924 crop shall not have been fully paid, including interest, any balance unpaid shall be paid to the Bank out of the proceeds of the said 1924-1925 crop, and if the same is not totally paid to the Bank out of the proceeds of the said 1924-1925 crop the balance owing shall be paid out of the proceeds of the 1925-1926 crop. If the proceeds of the sale of said 1925-1926 crop are not sufficient to cover the unpaid balance, the Philippine Trust Company, as Trustee, shall execute a chattel mortgage on the subsequent crops until the whole amount due, with interest, is paid." (R. 112.)

It should be noted that Paragraph 4 covers not only the advances to be made to complete the financing of the existing crop but also covers previous advances and for that reason makes a distinct concession to petitioner.

As can be seen from the above analysis of Exhibit "J," petitioner not only assumed no new obligations thereunder, but was in fact granted substantial favors thereby. The value to the petitioner of the limitation of its obligation to continue financing the operation of the property was demonstrated by subsequent events. Exhibits "A" and "B" of Exhibit "Q" (R. 149-153) show that almost ₱9,000,000.00 was advanced for the financing of the said property up to the time of its sale under the trust deed and that of that sum only ₱4,000,000.00 was recovered out of the proceeds of said operation. Petitioner by means of the provisions of Exhibit "J" recovered every centavo of the money advanced by it (Exhibit "K-1, Record 115-121). Respondents, however, who continued to finance the crop without the aid of petitioner from 1924 to 1929 bore the burden of the entire loss.

Seventh.—The purpose of the procedure stipulated in Exhibit "C" for the foreclosure of the second mortgage and acquisition of title by the San Jose Development Company subject to a renewed second mortgage in favor of the petitioner was to enable the San Jose Development Company to take any profits which arose from financing the operation of the property. The agreement of petitioner in Exhibit "J" to maintain its mortgage in status quo and to sell the property under the foreclosure or to assign the judgment to the respondents or their nominees was made for the same purpose, that is to say, to enable respondents

to obtain any profit which might arise from financing the operation of the property. Since petitioner had withdrawn from the financing agreement, it was no longer entitled to share in any profit which might arise therefrom. Petitioner had everything to gain and nothing to lose from such an agreement, for the reason that as long as respondents continued to finance the property, there was a possibility that its value would be enhanced to such an extent that it could be sold for a sum sufficiently in excess of the debts secured by the trust deed to pay off petitioner's second mortgage; whereas in the absence of such financing, petitioner's second mortgage was of absolutely no value. As subsequent events demonstrated, the property was not worth enough to cover more than a small fraction of the debts preferentially secured by the trust deed. Clause 5 of Exhibit "J" was, on the other hand, of importance to respondents only in the remote possibility of a successful financing, acquisition, and sale of the property. In the event of failing in their financing and promotion, respondents could always rely upon the trust deed to insure the return of at least a part of their preferred claim for advances to the Trustee. Since, however, the judgment of foreclosure on the second mortgage had already been obtained before the execution of Exhibit "J," a sale thereunder subject to the trust deed would have been simpler and possibly more feasible than a sale under the trust deed. Respondents were interested in petitioner's second mortgage for this reason only. To say that respondents were willing to guarantee the huge amount owing on petitioner's second mortgage merely for the purpose of providing a simpler mechanism with which to acquire the property is to make a claim which is utter-

ly preposterous. Such a claim is especially preposterous in view of the fact that under Exhibit "C," respondents already had the right to utilize that mechanism and also had the absolute engagement of petitioner to assist in financing the operation of the property indefinitely. Respondents actually offered to pay petitioner a small sum for its second mortgage in Exhibits "O" and "O-1" (R. 139-142) for the reason explained in Exhibit "O-1" that some legal expense and considerable time would be saved by executing the said second mortgage instead of the trust deed (R. 142). This offer was not, however, made at that late date by respondents for the purpose of acquiring the property and selling it at a profit under the option in Exhibit "J," but it was made for the sole purpose of selling the property to pay off the obligations in default under the trust deed including their own advances to the trustee. Petitioner after entertaining the offer of respondents for about a year (Exhibit "O-2"; R. 143) finally rejected the same in Exhibit "O-4" (R. 144-145) on the ground of an alleged "general understanding" with the respondent Philippine Trust Company that it would pay the full amount of its claim under said second mortgage. It is to be especially noted that petitioner in Exhibit "O-4" did not refer to any specific contract or written agreement but referred only to a "general understanding." Petitioner ever since has been attempting to locate where that alleged "general understanding" was expressed.

**Alleged General Understanding that Respondents Pay Petitioner's Second Mortgage**

Respondents are not certain from petitioner's petition and supporting brief due to their indefinite

character that the latter still adheres to its previous contention that such a general understanding existed, but we shall refute it because of the advisability of meeting every possible adverse contention.

Aside from the fact that such a general unwritten understanding would not obligate respondent corporations, it is clear that no such "general understanding" existed notwithstanding petitioner's reference thereto in Exhibit "O-4" (R. 144).

Petitioner copies Exhibit "F" in full in its petition (pp. 6-8). It contended before the courts below that the alleged general understanding was supported by the following clause of Exhibit "F":

> "We will further recognize the mortgage of the National Bank and, if we should sell the properties of the Mindoro Sugar Company, we will see that the purchaser makes satisfactory arrangements for the payment of the mortgage of the Philippine National Bank." (R. 102.)

Petitioner attempted in the Philippine Courts to deduce the alleged "general understanding" out of the above paragraph by saying that the word "if" means "when" and that the word "recognize" means something in the nature of a "guaranty."

Though it is true that the word "if" may mean "when" under special circumstances for the purpose of fixing the time at which a conditional obligation is to be performed *if the condition is fulfilled*, it never means "when" in the sense advanced by petitioner. It is always an indication of a contingency which may or may not occur. It never indicates an event which is certain to occur.

Petitioner also attempted to give some peculiar meaning to the word "recognize," implying that it meant something akin to "guarantee."

> "The word 'recognize' according to the best lexicographers signifies to admit, to acknowledge something existing before."
> (*Leak* v. *Bear*, 80 N. C. 271, 273.)

When respondents proposed to "recognize" petitioner's second mortgage, they were therefore merely proposing to admit its existence. This admission of its existence would, of course, be only an admission of its existence *as a second mortgage.*

In addition to the fact, however, that the word "recognize" does not in any way imply a guaranty, we have in the very same document Exhibit "F" the express refusal of respondents to guarantee the second mortgage of petitioner. (R. 101-102.)

In view of the express refusal of respondents in Exhibit "F" referred to above to guarantee payment of petitioner's second mortgage, it is impossible to interpret the word "recognize" as proposed by petitioner. Even in the absence of respondents' express refusal to guarantee petitioner's second mortgage, Article 1827 of the Philippine Civil Code would prohibit an implied guaranty.

> "Art. 1827. Guaranty shall not be presumed; it must be express and cannot be extended beyond its specified limits."

Petitioner attempts to glean some comfort from the fact that respondents said in Exhibit "F" that:

> "We cannot see our way clear to guarantee the payment of the said mortgage at any particular time," (R. 102.)

and claims that this amounts to an agreement to guarantee the payment of the mortgage at some time. It is upon such flimsy grounds as this that petitioner's claim for the payment of its second mortgage rests.

Article 1827 of the Philippine Civil Code just quoted was undoubtedly framed and enacted for the purpose of defeating the type of claim now being made by petitioner. When we consider that respondents just prior to the making of the above statement had expressed the opinion that the bondholders of Mindoro were under no obligation with respect to the mortgage held by the National Bank, it is difficult to understand how the petitioner could nevertheless make the claim that in the next breath respondents agreed to guarantee said mortgage (R. 102).

**The Language of Exhibit "J" and Not That of Exhibits "F" and "G" Must Control**

In citing and discussing Exhibits "F" and "G" both parties have presumed on the patience of the Courts for they are both mere letters in which tentative proposals were made and which were merged in Exhibit "J." The only language which is binding upon the parties is that used in the contract Exhibit "J" which was signed by the parties and approved by their boards of directors. If the language of Exhibit "J" differs in any respect from that of Exhibit "F" or Exhibit "G," it must be presumed in the absence of proof to the contrary that the differences were intentionally created by the parties. Since it would have been more natural for the parties in the absence of any reason to the contrary to have copied verbatim the proposition made in Exhibit "F," it must also be presumed that the parties were not satisfied with the language in said Exhibits "F" and "G." The language used in the contract actually entered into between the parties corresponding to that relied upon by petitioner in Exhibits "F" and "G" is as follows:

"The Second Mortgage of ₱250,000.00 of the Philippine National Bank to be recognized by the parties of the Second and Third Parts in the event of a sale of the properties of the Mindoro Sugar Company by the said parties when provision will be made whereby the purchaser will make satisfactory arrangements for the payment of the amount of the Mortgage of the Philippine National Bank." (Exhibit "J," R. 111.)

It is to be noted that in Exhibit "J" respondents agree to recognize the second mortgage of petitioner only in the event of a sale of the property by them, in which event respondents were to make suitable arrangements with the purchaser for the payment of petitioner's second mortgage. The words "in the event of" are so clearly words of contingency that it is idle to claim otherwise. The obvious reason for limiting the recognition of petitioner's second mortgage to the event of a sale of the property was that in the absence of its acquisition and sale by respondents under the plan embodied in Paragraph 5 of Exhibit "J" (R. 112-113), the mortgage would still be a mortgage of record though a second mortgage and would need no recognition as such. In the event respondents exercised their option under Paragraph 5 of Exhibit "J," however, to acquire the property by carrying out the foreclosure sale, petitioner's second mortgage would be extinguished as of record and respondents' promise to recognize it would then become important. Respondent's recognition of it, however, would of course be no more than a recognition or renewal of it as a second mortgage and would not amount to a guaranty of its payment, nor give it priority over the deed of trust as inferentially contended by petitioner.

**True Intention of the Parties Under Paragraph 2 of Exhibit "J"**

Paragraph 2 of Exhibit "J" provides:

> "The Second Mortgage of ₱250,000.00 of the Philippine National Bank to be recognized by the parties of the Second and Third Parts in the event of a sale of the properties of the Mindoro Sugar Company by the said parties when provision will be made whereby the purchaser will make satisfactory arrangements for the payment of the amount of the Mortgage of the Philippine National Bank." (R. 111.)

An examination of the above quotation shows:

*First*, that no obligation is imposed upon respondents to make a sale of the property. If such an obligation had been intended, it would certainly have been expressed and the words of option and of contingency "in the event of a sale" would never have been used.

*Second*, that the sale, the possibility of which is contemplated by Exhibit "J," is a sale by the parties of the second and third parts. Four parties signed the contract. The party of the first part was the Philippine Trust Company as trustee of the trust deed; the parties of the second and third parts were the Philippine Trust Company in its individual capacity and the Union Insurance Society of Canton, Ltd. in its individual capacity; and the party of the fourth part was the petitioner. Obviously, therefore, the sale referred to in Exhibit "J" was *not* to be a sale by the trustee who represented the bondholders under the trust deed and over whom respondents and particularly Union Insurance Society of Canton, Ltd. had no control; otherwise, Paragraph 2 would have referred to a sale by the party of the first part, the trustee,

instead of only to a sale by the respondents, the parties of the second and third parts.

An examination, also, of Exhibit "C," the prior contract (R. 80-83); of Exhibit "E," the memorandum of Mr. O'Malley (R. 97-101); and of Paragraph 5 of Exhibit "J" (R. 112-113) shows clearly what the parties were thinking of when they inserted Paragraph 2 in Exhibit "J." As will be recalled, the plan of the parties under Exhibit "C" was to acquire title to the property from the Mindoro Sugar Company through the foreclosure sale of petitioner's second mortgage. The property was then to be operated by the parties subject to the trust deed and a second mortgage to be given petitioner for the amount for which the property was bid in at the foreclosure sale of the second mortgage. We quote again from Exhibit "E" in its reference to Exhibit "C," as follows:

> "When execution is accomplished on this mortgage, the property covered thereby will be bid in by the operating partnership, operated for joint account under our said agreement until such time as it shows a profitable outturn, and then sold, any profit resulting to be divided equally between the Bank, the Union Insurance Society of Canton, and the Philippine Trust Company." (R. 99.)

At the time of the execution of Exhibit "C," the parties apparently hoped that the property could be operated at a profit and that it could then also be sold at a profit over and above the existing liens. It was undoubtedly such a sale as this that the parties were contemplating in Exhibit "J." Paragraph 5 of Exhibit "J" provided a substitute for the method of acquiring the property outlined in Exhibit "C." However, since Exhibit "C" had been cancelled and petitioner had

withdrawn from the financing agreement, the acquisition of the property by the respondents was made entirely optional with them.

> "The foreclosure proceedings instituted by the Bank shall remain in statu quo as long as the Philippine Trust Company and the Union Insurance Society of Canton, Ltd. continue to finance the crop and the operation of the Mindoro Sugar Estate with the understanding that *if at any time the Philippine Trust Company and the Union Insurance Society of Canton, Ltd., or either one, desire it,* the Bank will proceed to the sale of the properties under the judgment of foreclosure or will assign the said judgment to the Philippine Trust Company and the Union Insurance Society of Canton, Ltd., or to either, or their nominee as they or either one may desire." (Par. 5, Exhibit "J," R. 112-113.)

The words italicized in the above quotation are the strongest sort of words to express the fact that the acquisition of the property was optional with respondents. These words of option are in harmony with the fact that no obligation was imposed upon respondents to make a sale of the property even after its acquisition. It would have been foolish to have given respondents the option to acquire or not to acquire the property to be sold and then impose upon them the obligation of selling it. If the first step and prerequisite to the sale, the acquisition of the property by respondents, was optional it is clear that the sale itself was intended to be optional. When we consider also that the words referring to the sale are words of contingency, in the event of a sale, it is impossible, even if there were reasons for it, to draw the conclusion advocated by petitioner that respondents were under an obligation to make a sale of the property. Petitioner

in view of its deep anxiety to be released from the financing stipulated in Exhibit "C" was in no position to dictate in Exhibit "J" as to when or under what circumstances respondents should sell in the event of acquiring the property.

Returning to the conditional provisions or obligations of Clauses 2 and 5 of Exhibit "J" (R. 111-113) and the reasons or consideration for making them conditional as elucidated in the second special defense (R. 10-13), attention is called to the fact that, although petitioner discusses the acquisition of the property and the sale thereof by respondents as conditions precedent to the liability of the latter (Sup. Brief, p. 29 et seq.), and although petitioner suggests certain vague economic and technical reasons for the conditional obligations of the clauses mentioned, it studiously avoids and fails to discuss the simple reasons advanced by respondents in their second special defense as to why the obligations of the clauses in question were intended to be conditional and the reasons why there was no occasion for or purpose in the recognition of petitioner's second mortgage or in arranging with a buyer to pay (by giving another second mortgage) unless in the process of carrying out Exhibit "J" the second mortgage and the judgment of foreclosure thereon should be extinguished, in which event steps would be taken to reinstate or renew petitioner's second mortgage.

Referring to the agreement Exhibit "C," Mr. O'Malley in a memorandum sent to petitioner on November 9, 1923 (Exhibit "E") among other things said:

> "Accordingly, the contract of which attached is a copy, was drawn up and duly

executed by all parties, and as the first step, the Bank filed suit in Calapan to foreclose its mortgage for ₱250,000.00 on March 5, 1923.

"When execution is accomplished on this mortgage, the property covered thereby will be bid in by the operating partnership, operated for joint account under our said agreement until such time as it shows a profitable outturn, and then sold, any profit resulting to be divided equally between the Bank, the Union Insurance Society of Canton, and the Philippine Trust Company." (R. 99.)

The foregoing comment of Mr. O'Malley offered in evidence by petitioner in conjunction with Exhibit "C" itself shows conclusively that the sole reason for the foreclosure of the second mortgage by petitioner was its agreement so to do, as a part of the financing agreement Exhibit "C" from which petitioner withdrew, leaving respondents the entire burden of any further financing.

Nevertheless, we find in petitioner's supporting brief (Page 32) the following misleading statement:—

"This second mortgage had long been due and the Bank had instituted foreclosure proceedings against the properties of the Mindoro Sugar for the collection of the capital secured by said mortgage. * * * The foreclosure of the mortgage of the Bank was a danger to the rehabilitation plan of the Mindoro Sugar in which the respondents had pinned all their hopes. The respondents in order to avoid this danger, worked for and obtained control over the foreclosure of the mortgage of the Bank, in exchange for the security of the payment of the latter's credit at a certain, though indeterminate future time."

The short answer to all the foregoing in addition to what has already been said is that the cancellation of Exhibit "C" was agreed upon in Exhibit "J," the same instrument in which it is claimed by petitioner in effect that respondents were coerced into agreeing to pay the second mortgage by fear of its pending foreclosure. If there were the slightest foundation for that contention, why, we ask, did respondents consent to the gratuitous cancellation of Exhibit "C"? The Bank was not only committed indefinitely by Exhibit "C" to the three-party financing of Mindoro but was also committed indefinitely to the postponement of any proceedings by foreclosure or otherwise to collect its second mortgage and could, therefore, create no possible menace to "the rehabilitation plan of the Mindoro Sugar."

That the respondents were fully aware of this indefinite commitment of petitioner by Exhibit "C" before the execution of Exhibit "J" is proven by Exhibit "F" offered in evidence by petitioner and from which we quote as follows:—

> "We are of the opinion, after receiving legal advice, that the agreement entered into on January 5, 1923, by and between the Philippine National Bank, the Union Insurance Society of Canton, Ltd., and the Philippine Trust Company regarding the financing of Mindoro is binding upon the National Bank and that it cannot be relieved of its responsibility thereunder without consent of our respective companies. *We are further of the opinion that the bondholders of Mindoro are under no obligation with respect to the mortgage held by the National Bank* and we can not see our way clear to guarantee the payment of said mortgage at any particular time." (R. 101-102.)

Respondents decline to answer petitioner's learned discourse on general principles of contracts and particularly on the subject of treating nominally conditional obligations as binding covenants where no reason or consideration is disclosed for the conditional character of such obligations. We are sure, without making any examination of the authorities cited by petitioner at Page 31 of its Supporting Brief, that none of those decisions justify the conversion of such pronounced optional and conditional obligations as those of Exhibit "J" into absolute covenants, even without the disclosure of the reasons or consideration for their conditional craracter; but when there are as many simple and convincing reasons showing an intent to make the obligations conditional as surround the execution of Exhibit "J," then we feel assured that no respectable jurisprudence can be found to support petitioner's contention.

Petitioner says at Page 30 of its Supporting Brief:

> "The interpretation accepted by the decision appealed from is absurd."

If respondents' analysis of and comments on Clauses 2 and 5 of Exhibit "J" and on Exhibit "C" are correct, then the "absurdity" makes its bed in the supporting brief of petitioner.

**Reasons Why Clauses 2 and 5 of Exhibit "J" Were Acceptable to Petitioner**

The clear exposition by the second special defense (R. 10-13) not only covers the fact that the promise of respondents in the second clause of Exhibit "J" to recognize petitioner's second mortgage and to arrange with the buyer for the payment of such mortgage was

entirely dependent upon, and would be fulfilled only "in the event of the sale of the properties by the said parties" (the respondents) but gives the simplest and most convincing reasons why Clause 2 in relation to Clause 5 of said Exhibit "J" were agreed upon and why they were acceptable to both respondents and petitioner. This explanation is:

1.—The second mortgage of petitioner had been foreclosed in conformity with Exhibit "C," thereby converting it into a judgment which was worthless unless the property was greatly enhanced in value by financing increased acreage of sugar cane.

2.—The agreement of January 5, 1923 (Exhibit "C"; Record 80-83) between respondents and petitioner for such financing was cancelled as a part of the provisions of Exhibit "J" at the request of petitioner. The absolute character of such cancellation as to all parties concerned is emphasized by a part of the stipulation of facts as follows:

> "It is further stipulated that if the Articles of Incorporation of the San Jose Development Co. mentioned in said agreement of January 5, 1923 (Exhibit 'C' hereof) were ever drafted, that prospective corporation was never capitalized and never functioned." (R. 20-21.)

The San Jose Development Company was to have been the very foundation for the performance of the agreement Exhibit "C."

3.—After the withdrawal of petitioner from further financing except as to a crop loan for that year, there was no one left able and willing to finance the previous extensive plan for expansion of the Mindoro Sugar Estate which inspired the then cancelled agreement Exhibit "C," except respondents.

4.—In this situation it was stipulated in Exhibit "J" in connection with Clause 2:

> "5. The foreclosure proceedings instituted by the Bank shall remain in statu quo as long as the Philippine Trust Company and the Union Insurance Society of Canton, Ltd. continue to finance the crop and the operation of the Mindoro Sugar Estate with the understanding that if at any time the Philippine Trust Company and the Union Insurance Society of Canton, Ltd., or either one, desire it, the Bank will proceed to the sale of the properties under the judgment of foreclosure or will assign the said judgment to the Philippine Trust Company and the Union Insurance Society of Canton, Ltd., or to either, or their nominee as they or either one may desire." (R. 112-113.)

In consideration of being released from the financing provided by Exhibit "C" and thereby "passing the buck" to respondents, petitioner as a gesture costing it nothing whatever agreed to hold the foreclosure proceedings of its worthless second mortgage in statu quo, while respondents continued pouring their own millions into the financing of a hopeless project, until the Bank Commissioner investigated and stopped respondent Philippine Trust Company (a banking institution) from proceeding further, as disclosed by Exhibit "P" (R. 145-146). Petitioner also agreed if respondents should desire it, to proceed to the sale of the properties under the judgment of foreclosure or to assign the judgment to respondents or either of them or to their nominees—another gesture costing petitioner nothing but encouraging respondents to go on with their mad undertaking.

5.—Inasmuch as the conditional prospective sale of the property under foreclosure or assignment of

the judgment of foreclosure if requested by respondents as a preparation for the conditional acquisition and sale of such property by respondents (Clause 2) would wipe out petitioner's second mortgage, it was very reasonable to anticipate that condition by providing for a renewal of petitioner's second mortgage by the buyer who would presumably acquire the property subject to the Trust Deed.

6.—The language of Clause 2 clearly imports that respondents were to recognize petitioner's interest only as a second mortgage and the fact that in the event of a sale by respondents it was the purchaser who, at the instance of respondents, would "make *satisfactory arrangements* for the payment of the amount of the mortgage," shows conclusively that the satisfactory arrangements for payment was not to have been payment itself, but an arrangement therefor. The provision that the purchaser "make satisfactory arrangements for the payment of the amount of the mortgage" also clearly discloses that the parties had in mind the same arrangement which they stipulated in one of the clauses of the agreement of January 5, 1923 (cancelled as a part of Exhibit "J") which we again quote for emphasis as follows:

> "That the Bank agrees to proceed immediately to the foreclosure of its mortgage and either bid the property in for the amount of the claim when sold or to join with the other two parties in bidding it in, in the name of the San Jose Development Company. If the Bank bids the property in it agrees to transfer its title to the San Jose Development Company so organized for the sum so paid, and *take in payment a second mortgage on the property for said* amount." (R. 82.)

7.—The proofs show that the property originally covered by the second mortgage of petitioner was sold at public auction by the trustees for ₱3,000,000.00 and that at the time of such sale the property was encumbered by obligations including the bonds and interest secured by the Trust Deed having preference over the bonds themselves (Section 12, First Paragraph, Exhibit "A"; Record 64-65), aggregating ₱9,861,063.52. (See Exhibits "L-3" and "M"; Record 129, 135.) *It follows that, even if the promise of Clause 2 had been absolute, instead of conditional, the failure of respondents to acquire and sell the property and to make arrangements with a buyer to give petitioner another second mortgage would have caused the latter no conceivable damage.*

**POINT 2.**

**No Sufficient Reason Stated for Granting Writ.**

The only reason stated by petitioner for the allowance of the writ is that "the decision of the Supreme Court of the Philippines has departed from the accepted and applied principles and mandates of law and equity, an action which justifies the exercise of this Honorable Court's power of supervision." (Pet. p. 26.)

The foregoing is equivalent to saying that the decision is contrary to law and equity.

The last provision of Clause (b), Paragraph 5 of Rule 38 constitutes the rule of this Honorable Court within which petitioner should have brought itself if possible according to the facts. This rule is as follows:

> ". . . or *has so far departed from the accepted and usual course of judicial proceedings*, or so

far sanctioned such a departure by a lower Court as to call for an exercise of this Court's power of supervision."

If we understand this rule, it has to do with disregard of the usual course of judicial proceedings, like trying an accused without a complaint or indictment for example and has nothing whatever to do with substantive law or equity.

Inasmuch as the reason quoted is the only reason given by petitioner for the granting of the writ prayed for, we presume the petition should be dismissed for that reason alone, although it is the first experience of the undersigned in the interpretation of this rule of the Court.

**POINT 3.**

**The Only Questions Raised by the Petition Are of Fact and Interpretation of Documents, and All of Which Questions Were Resolved by Both Philippine Courts Against the Contention of Petitioner.**

For the proposition that this Court will not review concurrent findings of fact of both lower Courts, we cite the following decisions:

United States v. Commercial Credit Co., 286 U. S. 63, 52 Sup. Ct. Rep. 467, 76 L. ed. 978, 980;

Page v. Arkansas Natural Gas Corporation, 286 U. S. 269, 52 Sup. Ct. Rep. 507, 76 L. ed. 1093, 1098;

Compañia General de Tabacos v. Collector of Int. Rev., 279 U. S. 306, 49 Sup. Ct. Rep. 304, 73 L. ed. 704, 706;

Gauzon v. Compañia General de Tabacos, 245 U. S. 86, 38 Sup. Ct. Rep. 46, 62 L. ed. 165, 167-168;

Arana de Villanueva v. Villanueva, 239 U. S. 293, 36 Sup. Ct. Rep. 109, 60 L. ed. 293, 296;

Reavis v. Fianza, 215 U. S. 16, 30 Sup. Ct. Rep. 1, 54 L. ed. 72;
Gray v. Noholoa, 214 U. S. 108, 29 Sup. Ct. Rep. 571, 53 L. ed. 931.

For the further proposition that this Court will not disturb the concurrent views of the two lower courts as to the interpretation of contracts involved unless convinced that such views are clearly erroneous, see

Montelibano y Ramos v. La Compañia General de Tabacos, 241 U. S. 455, 36 Sup. Ct. Rep. 617, 60 L. ed. 1099.

**POINT 4.**

**The Petition and Supporting Brief Violate Clause (d), Paragraph 2 of Rule 27, in that Neither Contains a Concise Statement of the Case**

We have already referred to this matter in our argument (pp. 9-11, supra), but its determination will necessarily depend upon the inspection of the Court.

**RESUMÉ**

1.—Exhibit "A," the Trust Deed; Exhibit "B," the second mortgage of petitioner; Exhibit "D-1," the judgment of foreclosure of Exhibit "B"; Exhibit "C," the original contract of financing between petitioner and respondents; and Exhibit "J," the contract by which Exhibit "C" was cancelled and substituted, are in reality the only documentary evidence essential for a correct determination of the case.

2.—The priority of the Trust Deed over the second mortgage is recognized in all of these documents.

3.—None of the documents mentioned contain any indication of any obligation of respondents to guarantee payment of the second mortgage.

4.—Exhibit "F," relied upon by petitioner, denies any obligation on the part of respondents with regard to the second mortgage and expressly refuses to guarantee the same.

5.—There is no conceivable motive, consideration, *causa*, or reason for the guaranteeing of petitioner's second mortgage by respondents.

6.—Exhibit "C" obligated petitioner: (a) to share in the financing of the crops of the Mindoro Sugar Estate for an indefinite period of time; (b) to secure a transfer of the title to the equity in the property of the Mindoro Sugar Company to the San Jose Development Company through the foreclosure sale and resultant extinction of the second mortgage and the acceptance in payment therefor of only another second mortgage on the same property from the San Jose Development Company for the sum which might be bid therefor at the foreclosure sale.

7.—Exhibit "J" which was executed at the request of petitioner cancelled Exhibit "C," thereby releasing petitioner from the obligation to continue financing the crop of the mortgaged property thereunder beyond the existing year but holding petitioner, nevertheless, to a plan for transferring the equity in the property to respondents at their option so long as the latter should continue financing the property.

8.—The sale, the possibility of which is mentioned in Clause 2 of Exhibit "J" under which respondents were to make provision with the purchaser for the payment of the second mortgage, was entirely optional with respondents; no obligation to make such sale was ever expressed and it was referred to as a mere contingency; moreover, if made at all, it was to have been a sale under the circumstances contemplated in Mr.

O'Malley's memorandum Exhibit "E," that is to say, a sale after the acquisition of the equity in the property by the respondents through the foreclosure sale under petitioner's second mortgage but only after the operation of said property under the financing of respondents should have shown such a "profitable outturn" that it would be possible to sell the property subject to the deed of trust for enough to cover petitioner's second mortgage and make a profit besides (R. 99).

9.—The fact that the sale, the possibility of which is contemplated by Clause 2 of Exhibit "J" was to be made, if at all, by the parties of the second and third parts who were the individual respondents and not by the party of the first part who was the trustee under the deed of trust, is further and of itself conclusive proof that the sale, the possibility of which was contemplated by the said Clause, was such a sale as that referred to by Mr. O'Malley in his memorandum (R. 99), that is to say, not a sale under the trust deed by the trustee but a sale by respondents individually of the title to and equity in the property subject to the trust deed after the acquisition thereof by respondents through the foreclosure sale of the second mortgage or assignment thereof to them by petitioner in harmony with the plan first provided in Exhibit "C" and subsequently modified in Clause 5 of Exhibit "J."

10.—Not only was the necessity of making such sale made conditional and dependent upon the profitable outcome of the operation of the property and the will of respondents but even the necessary first step and prerequisite to the said sale, that is to say, the acquisition of the property by respondents, was made expressly optional with them by Clause 5 of Exhibit "J."

11.—The inability of respondents to make any profit out of the mortgaged property and the actual loss of millions of pesos in operating the same and the fact that the property sold by the trustee in execution of the trust deed brought only ₱3,000,000.00 or ₱6,800,000.00 less than enough to cover the debts due under the trust deed, demonstrate conclusively that *the sale*, the possibility of which was contemplated by Mr. O'Malley's memorandum, and by paragraph 2 of Exhibit "J," *would have been utterly impossible even if respondents had elected to acquire the property* (R. 99, 110-113).

12.—Respondents never acquired or sold the property, nor had they any control over it at the time of its sale under the trust deed.

13.—Clauses 2 and 5 were obviously incorporated in Exhibit "J" for the sole purpose of granting an option to respondents to acquire under the foreclosure sale of the second mortgage and to sell the property of the Mindoro Sugar Company subject to the trust deed and to provide in the event of their exercising that option for a new or renewed second mortgage upon the extinction of the old second mortgage in the process of such foreclosure sale.

14.—Article 1827 of the Philippine Civil Code provides that:

> "Guaranty shall not be presumed; it must be express and cannot be extended beyond its specified limits * * *."

15.—There is no sufficient reason stated in the petition for the granting of the writ.

16.—The only questions raised by the petition are questions of fact and interpretation of documents,

and all of which questions were resolved by both Philippine Courts against the contention of petitioner.

17.—The petition and supporting brief violate Clause (d), Paragraph 2 of Rule 27, in that neither contains a concise statement of the case.

**RELIEF**

For all of the reasons stated, respondents pray that the petition be denied, with costs against petitioner.

Manila, Philippines, June 12, 1940.

Respectfully submitted,

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I hereby certify that I have been served with three (3) copies of the foregoing brief, this .... day of June, 1940.

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